(17,694.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 234.

JOHN E. CODLIN, CHAIRMAN, AND MANUEL M. SALAZAR, CLERK, OF THE BOARD OF COUNTY COMMISSIONERS OF COLFAX COUNTY, APPELLANTS,

vs.

CHARLES B. KOHLHOUSEN, CHRISTOPHER N. BLACKWELL, ALFRED C. PRICE, AND TIMOTHY F. McAULIFFE.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 26, 1900.

1 Be it remembered, that heretofore, on the eighteenth day of June, A. D. 1898, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a transcript of record, which said transcript of record is in words and figures as follows, to wit:

2 In the Supreme Court of the Territory of New Mexico, July Term, 1898.

JOHN E. CODLIN, Chairman of the Board of County Commissioners of Colfax County, and Manuel M. Salazar, Clerk of the Board of County Commissioners of Colfax County, Plaintiffs in Error,
versus
CHARLES B. KOHLHOUSEN, CHRISTOPHER N. BLACKWELL, Alfred C. Price, and Timothy F. McAuliffe, Defendants in Error. } No. 773.

Transcript of Record.

TERRITORY OF NEW MEXICO, }
Fourth Judicial District, County of Colfax. }

Be it remembered, that heretofore, to wit: on the 15th day of October, A. D. 1897, Charles B. Kohlhousen, Christopher N. Blackwell, Alfred C. Price and Timothy F. McAuliffe, by their attorneys,
3 filed in the office of the clerk of the district court of the fourth judicial district of the Territory of New Mexico, sitting within and for the county of Colfax, their petition against John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of said board of county commissioners, which said petition is in the words and figures as follows, to wit:

District Court, Fourth Judicial District, Territory of New Mexico, County of Colfax.

CHARLES B. KOHLHOUSEN, CHRISTOPHER N. BLACKWELL, Alfred C. Price, Timothy F. McAuliffe
vs.
JOHN E. CODLIN, Chairman of the Board of County Commissioners of the County of Colfax, and Manuel M. Salazar, Clerk of said Board of County Commissioners. } No. —.

Comes now the said Charles B. Kohlhousen, Christopher N. Blackwell, Alfred C. Price and Timothy F. McAuliffe, your petitioners in the above-entitled cause, and allege that they are citizens, residents and tax-payers of the said county of Colfax, and that heretofore, to wit: on the — day of March, 1897, they, together with one A. L. Hobbs, were a committee appointed by the citizens, residents and tax-payers of the city of Raton, in said county, to take such action

and proceedings as might be necessary to procure the removal of the county-seat of said county of Colfax, from the town of Springer to the said city of Raton, in said county, in pursuance of the provisions of chapters 6 and 33 of the Acts of the Legislative Assembly of the Territory of New Mexico, passed during its session held in 1897.

Second. That heretofore in pursuance of the provisions of said chapter 6, an election has been held in said county, and such
4 election resulted in favor of the removal of the county-seat of the said county of Colfax to the said city of Raton as aforesaid.

Third. That in pursuance of the provisions of said chapter 33, the city of Raton has agreed to join with the county commissioners of said county in the erection of a court-house and jail and suitable apartments for city purposes in said city of Raton; that said agreement has also been made with the said board of county commissioners, and in pursuance of such agreement the said city of Raton has caused to be placed in the hands of the authorized agent of the said county $9,500 in bonds of said city, to be used by the said county in the procurement of a site for the building of said court-house and jail; that the said county commissioners have selected a site in the said city of Raton, on which to erect such court-house and jail, and that a deed for such site conveying the same to the said county has been placed in escrow and the owner of said lots is ready to take in payment for such site, bonds of the said city of Raton amounting to the sum of $500.

Fourth. That said board of county commissioners has authorized the issuance of bonds of said county to the amount of $16,000 to be used in the construction of said court-house and jail; that said bonds have been printed and await the signature of the chairman of said board of county commissioners and the clerk of said board. That said board has authorized such bonds to be executed by the said defendants, the chairman and clerk of said board respectively, and to be delivered to Christopher N. Blackwell, who has been appointed by said board to receive said bonds and make a sale thereof for not less than their par value. That the said bonds were authorized to be executed and delivered to the said Blackwell on or before the first day of October, 1897; that the said Blackwell as such
5 agent advertised for bids for the said bonds and has received bids for at least one-half of said bonds at their par value, and the person so bidding for the same requires prompt delivery of such bonds to be made. That the said chairman and clerk of said board have been requested to execute such bonds in their official capacity, but this they have failed to do, and the said chairman, John E. Codlin, has absolutely refused to execute such bonds, and the said clerk, Manuel M. Salazar, has conditionally refused to execute such bonds, which conditions, as your petitioners are advised and believe, are unauthorized.

Fifth. That the said board of county commissioners have adopted plans and specifications for such court-house and jail and have advertised for bids for the erection of such court-house and jail upon the said site; such bids to be handed in to the said board on the

25th day of October, 1897; and that unless such bonds are signed by said defendants, John E. Codlin and Manuel M. Salazar, as such chairman and clerk of said board, it will not be practicable, as your petitioners believe, to sell the said bonds at par as authorized by the statute in such case made and provided, or to let a contract for the erection of such court-house and jail at the time above indicated.

Wherefore your petitioners pray that a writ of mandamus may be issued by the said court directed to the said John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of said board, commanding them forthwith to sign and execute as such chairman and clerk respectively, the said bonds of the said county of Colfax, to the amount of sixteen thousand dollars and deliver the said bonds to the said C. N. Blackwell, agent, as aforesaid, of said board, and that your petitioners may have such other and further relief in the
6 premises as to the said court shall seem meet and proper.

A. A. JONES,
CHAS. SPRINGER,
Attorneys for Petitioners.

TERRITORY OF NEW MEXICO, }
County of Colfax. }

Charles Springer, being first duly sworn according to law deposes and says that he has read the foregoing petition, and knows the contents thereof and that the same are true of his own knowledge, except as to the matters and things therein stated on information and belief and as to those matters and things he believes them to be true. That he is the agent and attorney for the petitioners in the above petition, and that this affidavit is made by him on behalf of said petitioners because it is desired and deemed by him to be necessary that the writ of mandamus should promptly issue in said cause, and that it is impracticable to obtain the affidavit of either of said petitioners as soon as deemed advisable and the exigencies of the case require.

CHARLES SPRINGER.

Subscribed and sworn to before me this 14th day of October, 1897.

[SEAL.] FELIX MARTINEZ, *Clerk.*

And afterwards, to wit, on the 15th day of October, A. D. 1897, there was issued out of said clerk's office an alternative writ of mandamus and two copies, which said alternative writ of mandamus is in the words and figures as follows, to wit:

District Court, Fourth Judicial District, Territory of New Mexico, County of Colfax.

7 CHARLES B. KOHLHOUSEN, CHRISTOPHER N. BLACKwell, Alfred C. Price, Timothy F. McAuliffe
vs.
JOHN E. CODLIN, Chairman of the Board of County Commissioners of the County of Colfax, and Manuel M. Salazar, Clerk of said Board of County Commissioners. } No. —.

The Territory of New Mexico to John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of said board of county commissioners, Greeting:

Whereas, by the petition of Charles B. Kohlhousen, Christopher N. Blackwell, Alfred C. Price and Timothy F. McAuliffe, it has been represented to our district court of the fourth judicial district of the Territory of New Mexico, sitting within and for said county of Colfax, for the trial of causes arising under the laws of said Territory, that on the — day of March, 1897, they, together with one A. L. Hobbs, were a committee appointed by the citizens, residents and tax-payers of the city of Raton, to take such action and proceedings as might be necessary to procure the removal of the county-seat of said county of Colfax from the town of Springer to the said city of Raton in said county, in pursuance of the provisions of chapters 6 and 33 of the Acts of the Legislative Assembly of the Territory of New Mexico, passed during its session held in 1897; and that heretofore in pursuance of the provisions of said chapter 6, an election has been held in said county and such election resulted in favor of the removal of the county-seat of the said county of Colfax to the said city of Raton as aforesaid; that in pursuance of the provisions of said chapter 33, the city of Raton has agreed to join with the county commissioners of said county, in the erection of a court-
8 house and jail and suitable apartments for city purposes in said city of Raton; that said agreement has also been made with the board of county commissioners and in pursuance of such agreement the said city of Raton has caused to be placed in the hands of the authorized agent of the said county $9,500 in bonds of said city, to be used by the said county in the procurement of a site for the building of the court-house and jail; that the said county commissioners have selected a site in the said city of Raton, on which to erect such court-house and jail, and that a deed for such site conveying the same to the said county has been placed in escrow and the owner of said lots is ready to take in payment for such site bonds of the said city of Raton, amounting to the sum of $500; that the said board of county commissioners has authorized the issuance of bonds of said county to the amount of $16,000, to be used in the construction of said court-house and jail; that said bonds have been printed and await the signature of the chairman of said board of county commissioners and the clerk of said board. That said board has authorized such bonds to be executed by the said defendants, the

chairman and clerk of said board respectively, and to be delivered to Christopher N. Blackwell, who has been appointed by said board to receive said bonds and make a sale thereof for not less than their par value. That the said bonds were authorized to be executed and delivered to the said Blackwell, on or before the first day of October, 1897, that the said Blackwell as such agent advertised for bids for the said bonds, and has received bids for at least one-half of said bonds at their par value, and the person so bidding for the same requires prompt delivery of such bonds to be made. That the said chairman and clerk of said board have been requested to execute such bonds in their official capacity, but this they have failed to do, and
9 the said chairman, John E. Codlin, has absolutely refused to execute such bonds, and the said clerk, Manuel M. Salazar, has conditionally refused to execute said bonds, which conditions, as said petitioners are advised and believe, are unauthorized. That the said board of county commissioners have adopted plans and specifications for such court-house and jail, and have advertised for bids for the erection of such court-house and jail upon the said site, such bids to be handed in to the said board on the 25th day of October, 1897, and that unless such bonds are signed by the said defendants, John E. Codlin and Manuel M. Salazar, as such chairman and clerk of said board, it will not be practicable, as said petitioners believe, to sell the said bonds at par as authorized by the statute in such case made and provided, or to let a contract for the erection of such court-house and jail at the time above indicated.

Now, therefore, you, the said John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of said board of county commissioners, are hereby commanded to forthwith sign and execute as such chairman and clerk respectively, the said bonds of the said county of Colfax, to the amount of $16,000, and deliver the said bonds to the said Christopher N. Blackwell, agent of said board, or that you show cause on the 19th day of October, 1897, at the court-house in the town of Springer, in said county of Colfax, why you have failed so to do.

Witness the Honorable Thomas Smith, chief justice of the supreme court of the Territory of New Mexico, and judge of the fourth judicial district court and the seal of said court this 15th day of October, A. D. 1897.

[SEAL.] FELIX MARTINEZ, *Clerk.*

10 The above and foregoing writ is allowed by the said court this 15th day of October, 1897, and said writ shall be served by delivery of the same, or a copy thereof to the said John E. Codlin and the said Manuel M. Salazar, by the sheriff of the county of Colfax, and that said writ shall be returnable on the 19th day of October, A. D. 1897.

THOMAS SMITH,
Chief Justice, etc.

And afterwards, to wit: on the 19th day of October, A. D. 1897, there was filed in said clerk's office the answer of the said defendants, John E. Codlin, chairman of the board of county commissioners of

the county of Colfax, and Manuel M. Salazar, clerk of said board of county commissioners, which said answer is in the words and figures as follows, to wit:

In the District Court, Fourth Judicial District, County of Colfax, Territory of New Mexico.

CHARLES B. KOHLHOUSEN, CHRISTOPHER N. BLACKWELL, ALFRED C. Price, and Timothy F. McAuliffe
vs.
JOHN E. CODLIN, Chairman of the Board of County Commissioners of Colfax County, and Manuel M. Salazar, Clerk of said Board of County Commissioners.

The joint and several answers of John E. Codlin, chairman of the board of county commissioners of the county of Colfax, Territory of New Mexico, and of Manuel M. Salazar, clerk of the said board of county commissioners, to the petition of the said petitioners, Charles B. Kohlhousen, Christopher N. Blackwell, Alfred C. Price, and Timothy F. McAuliffe.

These defendants, now and at all time- hereafter, saving and reserving to themselves, and each of them, all benefit and advantage of exception or otherwise that can or may be had or taken to
11 the many errors, uncertainties and other imperfections in the said petition contained, or to so much thereof as the defendants are advised is material or necessary to be answered, for answer thereto and showing cause why the mandamus therein prayed for should not be granted by this honorable court, they, these defendants, severally answering, say:

That they, and each of them, are not advised as to whether the said petitioners, together with one A. L. Hobbs, were a committee appointed by the citizens, residents and tax-payers of the city of Raton to take such action and proceedings as might be necessary to procure the removal of the county-seat of the county of Colfax from the town of Springer to the said city of Raton, in said county, in pursuance of the provisions of chapters 6 and 33 of the laws passed by the 32nd Legislative Assembly of the Territory of New Mexico, and therefore deny the allegations in said petition contained with reference thereto.

And these defendants, further answering admit that pursuant to the provisions of said chapter 6, an alleged election was held in said county of Colfax and that such alleged election resulted in favoa of the removal of the county-seat of said county from the town of Springer, to the city of Raton, but these defendants say that all of the acts, orders, directions, decrees, decisions and proceedings taken pursuant to the said chapter 6, of the laws of the said 32nd Legislative Assembly and the alleged election had and held pursuant to the provisions of said act and all subsequent acts, proceedings, orders, canvasses, publications and decrees of whatsoever kind made by the said board of county commissioners in and about the said alleged election, by which it was sought to remove the county-seat of

said county from the town of Springer to the city of Raton,
12 were and are illegal, unwarranted, irregular and unauthorized in law and are of no force and effect whatever.

And these defendants further answering admit that pursuant to the provision of said chapter 33 of the Acts of the 32nd Legislative Assembly of New Mexico, the city of Raton has agreed to join with the county commissioners of the said county of Colfax in the erection of a court-house and jail and suitable apartments for city purposes in the said city of Raton, said agreement having been made with a majority of said board and that in pursuance of such alleged agreement the city of Raton caused to be placed in the hands of the authorized agent of the said county as nominated by a majority of said board, $9,500 in bonds of the said city of Raton to be used by the said county in the procurement of a site for the building of the court-house and jail; and further answering, admit that a majority of the said board have selected a site in the said city of Raton upon which to erect such court-house and jail, but these defendants further answering say that any and all acts and proceedings of the said city of Raton in and about any and all agreements alleged to have been made with the county commissioners of said county and any and all acts of the city of Raton in and about the issue and placing in the hands of any authorized agent of said board of county commissioners of the sum of nine thousand five hundred dollars of the bonds of the said city of Raton, or any other amount of the bonds of said city, to be used for the erection of a court-house and jail or for any other purpose are, pursuant to the laws of the United States, illegal, unwarranted, void and of no effect whatever.

And these defendants further answering say that they are not advised as to whether a deed for any site for said proposed court-house
and jail, conveying the same to the county of Colfax has been
13 placed in escrow and that the owner of said site and lots is ready to take payment for such site and lots in bonds of the city of Raton amounting to the sum of five hundred dollars or any other amount; and therefore deny the allegation in relation thereto, and these defendants further answering say that any act, agreement or proceeding by the said city of Raton, relative to the placing of any deed in escrow for any such site and lots for the purpose as charged by said petitioners is unwarranted, illegal and void, and that the selection of any site for any such purpose in the city of Raton by the board of county commissioners is idle, illegal, unwarranted, unauthorized and of no effect.

And these defendants further answering admit that a majority of the board of county commissioners has attempted to authorize the issuance of $16,000 of the bonds of the county of Colfax for the purposes named in said petition, but they say that any and all acts and proceedings of the said board in relation to such issue of bonds is wholly unauthorized, illegal and void, and that this defendant, John E. Codlin, has heretofore refused as chairman of the said board to sign and execute the said bonds.

And these defendants admit those allegations of the petition as to the printing of said bonds, the awaiting of the signature of these de-

fendants, the alleged authorization of their execution by these defendants, the delivery of the same to one Christopher N. Blackwell, appointed by the board of county commissioners to receive the said bonds and make sale thereof, but these defendants further say that all of the acts of said board of county commissioners in relation thereto were and are idle, illegal, unauthorized and void and of no effect.

And these defendants further answering say that they do not know whether said Blackwell advertised for bids, and has received
14 bids for at least one-half of said bonds, and do not know that the person bidding for the same requires prompt delivery of such bonds, and therefore they deny the allegation in relation thereto.

And these defendants further answering admit that they have been requested to execute the said bonds in their official capacity, and that they have hitherto peremptorily and continuously refused so to do for the reasons following, to wit:

First. These defendants answering state and show that all of the orders, decrees, proceedings and all other acts had and done by the board of county commissioners of the said county of Colfax in and about the removal of the county-seat of said county were made, had and done under and pursuant to chapters 6 and 33 of the Acts of the 32nd Legislative Assembly of the Territory of New Mexico.

Second. That the said Acts of the 32nd Legislative Assembly, namely, chapters 6 and 33, being acts entitled as follows: Chapter 6, "An act in relation to removal of county-seats," approved February 5th, 1897, and chapter 33, "An act relating to municipal corporations and for other purposes," approved March 10th, 1897, in their terms and provisions are such that under the limitations therein mentioned and contained, they can apply, and can only be made to apply, as your defendants verily believe and so state the facts to be, to the county of Colfax in the Territory of New Mexico.

Third. And these defendants say that there are eighteen counties in the Territory of New Mexico, by name and with county-seats as follows, to wit: The county of Union, of which a place called Clayton, not a city, town or village under the laws of the Territory of New Mexico, is the county-seat, and that there is no incorporated city, town or village at least twenty miles distant from the
15 said place called Clayton, situate upon any line of railroad or elsewhere in said county, and being a city, town or village of a larger population than the said place called Clayton; the county of Mora of which the place called Mora is the county-seat, not a city, town or village under the laws of New Mexico, and there being no incorporated city, town or village in said county of Mora at least twenty miles distant from said place called Mora, situate upon any line of railroad or elsewhere in said county and being a city, town or village of a larger population than the said place called Mora, the present county-seat.

And these defendants state that the same conditions, in one respect or another, as to population, class of cities, towns and villages and their location from each other and as to railroads, obtain as to

the following counties in this Territory, to wit: the county of San Miguel, of which the place called Las Vegas is the county-seat; the county of Guadalupe of which the place called Puerto de Luna is the county-seat; the county of Taos of which the place called Taos is the county-seat; and in which county there is no incorporated city, town or village; the counties of Rio Arriba and San Juan, in which counties there is no incorporated city, town or village; the county of Bernalillo of which the place called Old Albuquerque is the county-seat; the county of Valencia of which the place called Los Lunas is the county-seat and in which county there is no incorporated city, town or village; the county of Socorro of which the city of Socorro is the county-seat, and that in said county there are no other cities, towns or villages incorporated under the laws of this Territory; the county of Sierra in which there are no incorporated cities, towns or villages and of which the place called Hillsboro is the county-seat; the county of Doña Ana of which Las Cruces is the county-seat, and in which county there are no in-
16 corporated cities, towns or villages; the county of Grant of which the city of Silver City is the county-seat and in which said county there are no other incorporated cities, towns or villages; the county of Eddy of which the place called Eddy is the county-seat, and in which county there are no other incorporated cities, towns or villages; the county of Chaves of which the place called Roswell is the county-seat and in which county there are no other incorporated cities, towns or villages; the county of Lincoln of which the place called Lincoln is the county-seat, and in which county there are no incorporated cities, towns or villages; the county of Santa Fé of which the city of Santa Fé is the county-seat, and in which county situate more than twenty miles from the said city of Santa Fé there is no city, town or village of a larger population than the said city of Santa Fé.

But these defendants say that there is one county in the entire Territory of New Mexico, and no other, in which county, situate upon a line of railroad more than twenty miles from the present county-seat, there is situate an incorporated city having a population greater than the present county-seat of said county, which county is the county of Colfax, of which the place called Springer is the county-seat and the name of the one incorporated city in said county being the city of Raton.

Fourth. And these defendants further answering say that the said Acts of the 32nd Legislative Assembly of the Territory of New Mexico, to wit: chapters 6 and 33 are acts special to the county of Colfax, and are respectively in their effect only applicable to the county of Colfax and are in contravention of that certain act of Congress of the United States, entitled "An act to prohibit the passage of local or special laws in the Territories of the United States, to limit
17 territorial indebtedness and for other purposes," approved July 30, 1886.

And these defendants say that every act, decision, determination and proceeding of the said board of county commissioners of the said county of Colfax in and about said county-seat removal, and every

act under said chapter 6 and every act of the said city of Raton by or through its city council or any other officer of said city under and pursuant to the said chapter 33 of the Acts of the 32nd Legislative Assembly are illegal, unauthorized, special and void.

And these defendants, further answering, say that the total amount of funds in the treasury of the county of Colfax with which to meet and pay the expenses of the said county for the current year, beginning January 1st, 1897, and ending December 31st, 1897, are and will be forthcoming from the levy of taxes made in said county in and during the year 1896, and state and show that there is remaining in the county treasury today no money whatever other than is absolutely necessary to pay the actual current expenses of the said county and State, and show that there is remaining in the county current expense fund of said county today the sum of $1,221.23, and that the outstanding indebtedness, not bonded, and a charge upon the general county fund, and indebtedness which will necessarily accrue prior to the 31st day of December, of this year, is a sum not less than $6,000, which sum is greater than the probable revenues of said county from the date hereof until December 31st, 1897; and these defendants state and show that at the present rate of assessment and taxation upon the property situate in Colfax county, the actual necessary expenses have for many years exceeded the revenue derived from the tax levies made for the discharge and liquidation of the same.

And these defendants further answering say that under
18 and pursuant to the provisions of an act of the said 32nd Legislative Assembly, the board of county commissioners of the county of Colfax, of which the said defendant, John E. Codlin is chairman, which said act is entitled, "An act for the purpose of funding floating indebtedness of counties, boards of education, municipal corporations and school districts, and for other purposes," approved March 12, 1897, said board is prohibited in terms, for any purpose whatever, to become indebted or contract any debts of any kind or nature whatever, during any current year, which at the end of such current year is not and cannot be then paid out of the money actually collected and belonging to that current year, and that any and all kind of indebtedness for any current year which is not paid and cannot be paid, is by said act declared to be null and void, and any officer violating such provision is liable to fine and imprisonment, or both, for such violation of the duty charged upon him by the said statute.

And these defendants further say that the said issue of $16,000 of bonds of the county of Colfax, which was ordered by the board of county commissioners at a meeting held in the said county by said board, on the 19th day of June, A. D. 1897, are each ordered dated the first day of July, A. D. 1897, and that one of the coupons attached to each of said bonds, which indicates the semi-annual interest due on such bonds, will, if said bonds are ordered issued and signed by these defendants, become due six months from the date thereof, and will be for interest accruing during the year 1897; and these defendants state and show that no provision is

made by law or by order of the board of county commissioners for the payment of said first accruing interest coupons, which are thirty-two in number, and each for semi-annual interest upon the principal sum of $500, and these
19 defendants answering say that they are advised and believe that under section 15 of an act of the 32nd Legislative Assembly of the Territory of New Mexico, entitled "An act for the purpose of the funding of floating indebtedness of counties, boards of education, municipal corporations and school districts and for other purposes," approved March 12, 1897, they and each of them would be liable to fine and imprisonment for executing bonds of the county of Colfax for the payment of interest on which, for the current year 1897, there is and can be no money in the treasury of the county during the said year 1897 with which to liquidate and discharge the said interest payments.

And these defendants further say that under and pursuant to section 4 of chapter 33 of the Acts of the 32nd Legislative Assembly of the Territory of New Mexico, it is the duty of said board to receive and accept the bonds of the city of Raton issued according to said act, together with an agreement duly executed by the owners of suitable grounds for said public building, to execute a good and sufficient deed conveying said grounds to the county of Colfax in exchange for a certain amount of bonds as named and set out in said section 4 of said act, and these defendants say that up to and including the time of the filing of this their answer to the petition herein, no such agreement has been received by said board of county commissioners as is by law provided.

And these defendants further answering deny that the petitioners are entitled to the relief or any part thereof in their said petition demanded and pray that the said petition and they be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

R. E. TWITCHELL,
W. C. REID,
Solicitors for Defendants.

20 TERRITORY OF NEW MEXICO, } ss:
County of Colfax, }

John E. Codlin and M. M. Salazar, defendants herein, being first duly sworn according to law, depose and say that they have read the foregoing answer and know the contents thereof, and that the same is true of their own knowledge, except as to matters and things therein stated upon information and belief, and as to the matters so stated they believe them to be true.

JOHN E. CODLIN.
M. M. SALAZAR.

Subscribed and sworn to before me this 19th day of October, 1897.

[SEAL.] FELIX MARTINEZ, *Clerk.*

And thereafter, to wit, on the 25th day of October, A. D. 1887, there was filed in the office of the said district clerk a peremptory writ of mandamus, and order for the issue of the same, which said writ of mandamus and order are in the words and figures as follows, to wit:

District Court, Fourth Judicial District, Territory of New Mexico, County of Colfax.

CHARLES B. KOHLHOUSEN, CHRISTOPHER N. BLACKWELL, Alfred C. Price, Timothy F. McAuliffe
vs.
JOHN E. CODLIN, Chairman of the Board of County Commissioners of the County of Colfax, and Manuel M. Salazar, Clerk of said Board of County Commissioners. } No. —.

The Territory of New Mexico to John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of said board of county commissioners, Greeting:

21 Whereas, by the petition of Charles B. Kohlhousen, Christopher N. Blackwell, Alfred C. Price and Timothy F. McAuliffe, it has been represented to our district court of the fourth judicial district of the Territory of New Mexico, sitting within and for the county of Colfax, for the trial of causes arising under the laws of said Territory, that on the — day of March, 1897, they, together with one A. L. Hobbs, were a committee appointed by the citizens, residents and tax-payers of the city of Raton, to take such action and proceedings as might be necessary to procure the removal of the county-seat of said county of Colfax from the town of Springer to the said city of Raton in said county, in pursuance of the provisions of c-apters 6 and 33 of the Acts of the Legislative Assembly of the Territory of New Mexico, passed during its session held in 1897; and that heretofore in pursuance of the provisions of said chapter 6, an election has been held in said county and such election resulted in favor of the removal of the county-seat of the said county of Colfax to the said city of Raton as aforesaid.

That in pursuance of the provisions of said chapter 33, the city of Raton has agreed to join with the county commissioners of said county in the erection of a court-house and jail and suitable apartments for city purposes in said city of Raton; that said agreement has also been made with the board of county commissioners and in pursuance of such agreement the said city of Raton has caused to be placed in the hands of the authorized agent of the said county $9,500 in bonds of said city to be used by the said county in the procurement of a site for the buildings of the court-house and jail; that the said county commissioners have selected a site in the said city of Raton on which to erect such court-house and jail, and
22 that a deed for such site conveying the same to the said county has been placed in escrow and the owner of said lots

is ready to take in payment for such site, bonds of the said city of Raton amounting to the sum of $500.

That the said board of county commissioners has authorized the issuance of bonds of said county to the amount of $16,000, to be used in the construction of said court-house and jail; that said bonds have been printed and await the signature of the chairman of said board of county commissioners and the clerk of said board.

That said board has authorized such bonds to be executed by the said defendants, the chairman and clerk of said board respectively, and to be delivered to Christopher N. Blackwell, who has been appointed by said board to receive said bonds and make a sale thereof for not less than their par value. That the said bonds were authorized to be executed and delivered to the said Blackwell on or before the first day of October, 1897; that the said Blackwell as such agent advertised for bids for the said bonds and has received bids for at least one-half of said bonds at their par value, and the person so bidding for the same requires prompt delivery of such bonds to be made. That the said chairman and clerk of said board have been requested to execute such bonds in their official capacity, but this they have failed to do, and the said chairman, John E. Codlin, has absolutely refused to execute such bonds, and the said clerk, Manuel M. Salazar, has conditionally refused to execute said bonds, which conditions, as said petitioners are advised and believe, are unauthorized.

That the said board of county commissioners have adopted plans and specifications for such court-house and jail and have advertised for bids for the erection of such court-house and jail upon the
23 said site, such bids to be handed in to the said board on the 25th day of October, 1897; and that unless such bonds are signed by the said defendants, John E. Codlin and Manuel M. Salazar, as such chairman and clerk of said board, it will not be practicable, as said petitioners believe, to sell the said bonds at par as authorized by the statute in such case made and provided, or to let a contract for the erection of such court-house and jail at the time above indicated.

Now, therefore, you, the said John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of said board of county commissioners, are hereby commanded to forthwith sign and execute as such chairman and clerk respectively, the said bonds of the said county of Colfax to the amount of sixteen thousand dollars, and deliver the said bonds to the said Christopher N. Blackwell, agent of said board.

Witness the Honorable Thomas Smith, chief justice of the supreme court of the Territory of New Mexico, and judge of the fourth judicial district court, and the seal of said court this 23rd day of October, A. D. 1897.

[SEAL.] FELIX MARTINEZ, *Clerk.*

The above and foregoing writ is allowed by said court this 23rd day of October, 1897, after considering the pleadings in the case and after hearing counsel, and said writ shall be forthwith served upon

the said John E. Codlin and the said Manuel M. Salazar, by the sheriff of Colfax county, N. M., by reading the same to them.

THOMAS SMITH,
Chief Justice, etc.

And which said writ and order is indorsed on the back thereof as follows, to wit:

24 No. 2015. District court, Colfax county. Charles B. Kohlhousen *et al. vs.* John E. Codlin, chairman, *et al.* Peremptory writ of mandamus. Filed in open court this 25th day of October, 1897. Felix Martinez, clerk.

TERRITORY OF NEW MEXICO, }
County of Colfax. }

I hereby certify that the within writ came to hand on the 23rd day of October, 1897, and was executed by me on the same date by reading the within writ to John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of said board of county commissioners.

MARION LITTRELL,
Sheriff of the County of Colfax.

Sheriff's Fees.

Serving 2 copies	$2 00
Return	50
	$2 50

And thereafter, to wit: on the 17th day of June, A. D. 1898, there was filed in the office of the said clerk of the district court, a bill of exceptions to the decision of the court ordering and directing the issue of said writ of mandamus, which said bill of exceptions is in the words and figures following, to wit:

25 TERRITORY OF NEW MEXICO, }
Fourth Judicial District, County of Colfax. }

In the District Court for said County and Territory.

CHARLES B. KOHLHOUSEN, CHRISTOPHER N. BLACKWELL, Alfred C. Price, and Timothy F. McAuliffe	
vs.	
JOHN E. CODLIN, Chairman of the Board of County Commissioners of the County of Colfax, and Manuel M. Salazar, Clerk of the Board of County Commissioners of the County of Colfax, Defendants.	No. 2015.

Be it remembered that this cause came on to be heard upon the alternative writ of mandamus heretofore issued in this cause, to wit: on the 15th day of October, 1897, and upon the answer of the said defendants showing cause why a peremptory writ of mandamus should not issue in said cause against them, said hearing and argu-

ment upon said alternative writ and answer having been by the court heard at Springer, New Mexico, on the 23rd day of October, A. D. 1897, the court did overrule said answer, and did order that a peremptory writ of mandamus should issue, and that said writ be forthwith served upon the defendants herein by reading the same to them, which said writ was duly served upon said defendants and by them duly obeyed, to which order, ruling and decision of the court so made as aforesaid, the defendants and each of them by their attorneys did then and there duly except.

And because the matters aforesaid do not fully appear of record the defendants present this, their bill of exception, and pray that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made and provided, which is accordingly done, this 17th day of June, A. D. 1898.

[SEAL.] WILLIAM J. MILLS,
Chief Justice, etc.

26 *Stipulation.*

It is hereby stipulated and agreed by and between A. A. Jones, attorney for the petitioners in the foregoing cause, and R. E. Twitchell, attorney for the defendants herein, that the foregoing bill of exceptions may be settled, signed and sealed by the judge of said court as a bill of exceptions in said cause, and that notice, service and other formalities in connection with the same are by the said attorneys hereby waived.

A. A. JONES,
Attorney for Petitioners.
R. E. TWITCHELL,
Attorney for Defendants.

TERRITORY OF NEW MEXICO, }
Fourth Judicial District, County of Colfax. }

I, Secundino Romero, clerk of the district court of the fourth judicial district of the Territory of New Mexico, in and for the county of Colfax, do hereby certify that the foregoing is a full, true and complete copy and transcript of all the pleadings and proceedings and record in a case lately pending in the said district court, in which Charles B. Kohlhousen, Christopher N. Blackwell, Alfred C. Price and Timothy F. McAuliffe, were petitioners, and John E. Codlin, chairman of the board of county commissioners of the county of Colfax, and Manuel M. Salazar, clerk of the board of county commissioners of the county of Colfax, were defendants, as the same remains of record in my office.

Witness my hand and the seal of said court this 17th day of June, A. D. 1898.

[SEAL.] SECUNDINO ROMERO, *Clerk.*

27 And afterwards, to wit, on the eight day of July, A. D. 1898, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an assignment of errors; which said assignment of errors is in words and figures as follows, to wit:

In the Supreme Court of the Territory of New Mexico, July Term, A. D. 1898.

JOHN E. CODLIN, Chairman of the Board of County Commissioners of the County of Colfax, and Manuel M. Salazar, Clerk of the Board of County Commissioners of the County of Colfax, Plaintiffs in Error,
versus
CHARLES B. KOHLHOUSEN, C. N. BLACKWELL, Alfred R. Price, and T. F. McAuliffe, Defendants in Error.

No. 773. Error to District Court, Fourth Judicial District, in and for Colfax County.

Assignment of Errors.

I. The court erred in overruling the answer of the plaintiffs in error and in ordering the issue of a peremptory writ of mandamus in said cause, as prayed for by the defendants in error.

II. The court committed divers other errors apparent upon the face of the record.

By reason whereof the plaintiffs in error pray that said judgment and order be reversed, etc.

R. E. TWITCHELL,
Attorney for Plaintiffs in Error.

28 And now comes the said Charles B. Kohlhousen, C. N. Blackwell, Alfred R. Price, and T. F. McAuliffe, by A. A. Jones, Esquire, and say that there is no error either in the record and the proceedings aforesaid or in giving judgment aforesaid in manner and form as above assigned, and therefore they pray that the said judgment may be affirmed and that their costs may be adjudged against said plaintiffs in error, etc.

A. A. JONES,
Attorney for Defendants in Error.

And afterwards, to wit, at a regular term of the supreme court of the Territory of New Mexico, begun and held at the city of Santa Fé, the seat of government, and commenced on the 25th day of July, the same being the last Monday of July, on the seventeenth day thereof, the same being the sixteenth day of August, A. D. 1898, the following, among other, proceedings were had, as follows, to wit:

JOHN E. CODLIN, Chairman Board of County Commissioners, Colfax County, *et al.*, Plaintiffs in Error,
vs.
CHAS. B. KOHLHAUSEN ET AL., Defendants in Error.

No. 773. Error to Colfax County.

This cause coming on to be heard upon transcript of record, assignment of errors, and briefs of counsel, was argued by R. E. Twitchell, Esq., for plaintiffs in error, and A. A. Jones, Esq., for de-

fendants in error, and submitted to the court, and the court, not being sufficiently advised in the premises, takes the same under advisement.

29 And afterwards, to wit, on the fourty-fourth day of said regular term, the same being Monday, the 28th day of August, the following, among other, proceedings were had as follows, to wit:

JOHN E. CODLIN, Chairman of the Board of County Commissioners of Colfax County, and Manuel M. Salazar, Clerk, Plaintiffs in Error,
vs.
CHARLES B. KOHLHOUSEN ET AL., Defendants in Error.
No. 773. Error to Colfax County.

This cause having been argued by counsel and submitted to and taken under advisement by the court upon a former day of the present term, the court, being now sufficiently advised in the premises, announces its decision by Associate Justice John R. McFie, Chief Justice Mills and Associate Justice Parker and Crumpacker concurring, Leland not participating, affirming the judgment of the court below, for reasons stated in the opinion of the court on file. It is therefore considered and adjudged by the court that the judgment of the district court in and for the county of Colfax, whence this cause came into this court, be, and the same hereby is, affirmed; and in accordance therewith the said John E. Codlin, chairman of the board of county commissioners, and Manuel M. Salazar, clerk of said board of county commissioners, are hereby commanded to forthwith sign and execute as such chairman and clerk respectively the said bonds of the said county of Colfax to the amount of sixteen thousand dollars, and deliver the said bonds to the said Christopher N. Blackwell, agent of said board. It is further ordered and adjudged by the court that the said plaintiffs in error pay all costs in the court below, as well as in this court, for which let execution issue.

30 And afterwards, to wit, on the second day of January, A. D. 1900, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an affidavit of value; which said affidavit of value is in words and figures as follows, to wit:

In the Supreme Court of the Territory of New Mexico, July Term, 1898.

JOHN E. CODLIN, etc., and M. M. SALAZAR, etc., Plaintiffs in Error,
vs.
CHARLES B. KOHLHAUSEN ET AL., Defendants in Error.

No. 773. Error to Colfax County.

TERRITORY OF NEW MEXICO, *County of Colfax*, } *ss:*

John E. Codlin and Manuel M. Salazar, being each by me first duly sworn, each for himself and not the one for the other, upon oath declares and says that they are the persons named as plaintiffs in error above; that the amount of county bonds issued and signed by them in pursuance to the mandate of the court below was the sum of sixteen thousand dollars, par value, and which bonds were thereupon sold, and that therefore thus the same entailed an outlay by the tax-payers of said county of Colfax *county* in the sum of sixteen thousand dollars, with interest, and that the amount and matter in dispute in said suit above entitled, exclusive of costs, does exceed the sum of five thousand dollars; that the court-house at the town of Springer, discarded by the county, has cost the county of Colfax more than twenty-five thousand dollars; further deponents saith not.

JOHN E. CODLIN. [SEAL.]
MANUEL M. SALAZAR. [SEAL.]

31 Before me, the undersigned notary public within and for the said county of Colfax, personally appeared the said Manuel M. Salazar and John E. Codlin, who, being by me first duly sworn each for himself, did declare and say that he has read the foregoing affidavit signed by themselves, and they know the contents thereof, and that the same is true.

In testimony whereof I have hereunto set my hand and notarial seal this the 22nd day of February, A. D. 1899.

HERMAN GOODMAN,
[SEAL.] *Notary Public for Colfax Co., N. M.*

And afterwards, to wit, on the second day of January, 1900, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a motion and precipe for appeal; which said motion and precipe is in words and figures as follows, to wit:

In the Supreme Court of the Territory of New Mexico, July Term, 1898.

JOHN E. CODLIN, Chairman Board of County Commissioners, Colfax County, *et al.*, Plaintiffs in Error,
vs.
CHAS. B. KOHLHAUSEN ET AL., Defendants in Error.
No. 773. Error to Colfax County.

Come now the plaintiffs in error in the above-entitled cause and pray the allowance of an appeal from the judgment of this honorable court heretofore rendered and entered on the 28th day of August, A. D. 1899, to the Supreme Court of the United States, and for grounds for said appeal state that the judgment and decision in said cause involves the construction of a United States statute, viz: An act to prohibit the passage of local or special laws in the Territories of the United States, to limit territorial indebtedness, and for other purposes, approved July 30th, 1886.

JOHN E. CODLIN,
Chairman, etc., et al.,
Per R. E. TWITCHELL,
Att'y for Pl'iffs in Error.

32 And afterwards, to wit, on the forty-eighth day of said regular term, the same being the second day of January, 1900, the following, among other, proceedings were has, as follows, to wit:

JOHN E. CODLIN, Chairman Board of County Commissioners, Colfax County, *et al.*, Plaintiffs in Error,
vs.
CHARLES B. KOHLHAUSE- ET AL., Defendants in Error.
No. 773. Error to District Court, Colfax County.

This cause coming on to be heard upon a motion of plaintiffs in error to be allowed an appeal to the Supreme Court of the United States, the same motion being made by R. E. Twitchell, Esq., attorney for plaintiffs in error, the same was argued, and the court, being sufficiently advised in the premises, allows and grants said motion. It is therefore considered and adjudged by the court that the appeal prayed for herein by the said plaintiffs in error to the Supreme Court of the United States be, and the same hereby is, allowed in manner and form as herein prayed for.

And afterwards, to wit, on the 28th day of August, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an opinion of the court; which said opinion of the court is in words and figures as follows, to wit:

33 In the Supreme Court of the Territory of New Mexico, July Term, 1898, August 28th, 1899.

JOHN E. CODLIN, Chairman, and MANUEL M. Salazar, Clerk, of the Board of County Commissioners of Colfax County, Plaintiffs in Error,

vs.

CHARLES B. KOHLHOUSEN, CHRISTOPHER M. Blackwell, Alfred C. Price, and Timothy F. McAuliffe, Defendants in Error.

No. 773. Error to District Court, Colfax County.

Syllabus.

1st. Whenever an act of the legislature can be so construed and applied as to avoid a conflict with the laws of Congress and give it the force of law, such construction should be adopted by the court.

2nd. It is not necessary that the law should operate upon all counties and cities of the Territory to be constitutional. If the law is general and uniform throughout the Territory, operating upon all of a certain necessary or reasonable class or upon all who are brought within the relations and circumstances provided in the act, and such law has provision for future as well as present operation, it is not obnoxious to the limitations against special and local legislation of the act of Congress known as the Springer act.

3rd. Chapter- 6 and 33, Session Laws of 1897, are not local or special legislation within the meaning of the act of Congress approved July 30th, 1886, chap. 818, 24 Stat., 170, and mandamus lies to compel a board of county commissioners to perform a duty required by chapters 6 and 33.

Error to Colfax county—before Justice Thomas Smith.

R. E. Twitchell and W. C. Reid, attorneys for plaintiffs in error. Jones and Springer, attorneys for defendants in error.

34 *Opinion of the Court.*

MCFIE, *J.:*

After hearing upon an order to show cause a peremptory writ of mandamus was issued and obeyed by the plaintiff- in error, and the cause is in this court upon a writ of error.

The plaintiffs in error rely for reversal upon the sole ground that both chapters six and thirty-three of the Laws of 1897, under and by virtue of which the county-seat of Colfax county was removed from the town of Springer to the town of Raton and bonds were issued for the erection of a court-house and jail, are invalid and void, in that they are local and special laws, and therefore in conflict with the act of Congress of July 30th, 1886—c. 818, 24 Stats., 170—which is, so far as applicable to this case, as follows;

"Be it enacted, etc., That the legislatures of the Territories of the United States, now or hereafter to be organized, shall not pass local or special laws in any of the following-enumerated cases, that is to say:

"Locating or changing county-seats—Regulating county and township affairs."

"In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the territorial legislatures thereof."

There is no question of pleading or practice involved in the case as presented by counsel in their briefs, and this court decides the case upon the one question argued in the briefs that chapters 6 and 33, Laws of 1897, are local and special laws and void because in conflict with the act of Congress above set — and referred to.

The legislative assembly of New Mexico has power to enact laws upon all rightful subjects of legislation, provided such laws are not in conflict with the Constitution or laws of the United States. Congress has the power to modify or nullify laws enacted by the legislative assembly of a Territory, but if Congress fails or refuses to act such laws remain in force so far as congressional action is concerned. There was no action by Congress as to these laws.

35 The location or removal of county-seats, the regulation of county affairs, and the classification of counties are undoubtedly rightful subjects of legislation, and territorial legislatures have power to enact laws upon such subjects. There is, indeed, a presumption in favor of legislative action which is fully pointed out by the supreme court of Pennsylvania in the case of Lloyd *vs.* Smith, 35th Atlantic Rep., 200.

"The presumption is always in favor of the legislative command and it must prevail unless clearly transgressing the constitutional prohibition."

The laws which the plaintiffs in error seek to have this court declare void are entitled to this favorable presumption and should stand unless it is overcome.

An examination of the laws in question also shows upon their face they are general laws. Section 1, chapter 6, begins as follows: "Whenever the citizens of any county in this Territory shall present a petition to the board of county commissioners," etc., and section 1, chapter 33, begins as follows: "Hereafter, when the county-seat of any county in this Territory shall be established at any incorporated city," etc.

So that these laws do not appear to be subject to the attack made upon them either in their titles or in the body of the acts, but counsel for plaintiffs in error in his brief says:

"It is true that the statute in question does not specifically name the county of Colfax, but the conditions and provisions in section 1 thereof are of that peculiar kind that they exclude every other county in the Territory from taking advantage of the provisions of the statute otherwise, and as a matter of fact prevent the removal of any county-seat in the entire Territory except that of the county of Col-

fax. It applies and can only be made to apply to the county of Colfax."

It is clear that section 1 of chapter 6 and the first proviso thereto *is* not subject to the above criticism, but the oral argument
36 developed the fact that the conditions which counsel complained of were contained in the last proviso to section 1, as follows:

"That the city, town or village named in the petition shall be at least twenty miles distant from, and of a population larger than the then county-seat of said county; and that no proposition to remove a county-seat from a city, town or village situated on a railroad to one not so situated shall be entertained or voted upon."

Before considering the terms of this proviso it is well to observe that section 1, together with its provisos, and in fact the entire chapter 6, is free from the vice which has caused the courts of the United States and many of the States and Territories to overthrow legislation as local and special.

Counsel for plaintiffs in error has cited many of the cases wherein legislative enactments have been declared unconstitutional and void because they were held to be special or local laws, but an examination of those cases will disclose a marked distinction between the laws thus involved and held to be special and those involved in this case.

In State *ex rel.* Columbus *vs.* Mitchell, 31st Ohio St., 592, the statute held to be unconstitutional provided that it should be applicable to "cities of the second class having a population of over thirty-one thousand at the last Federal census." The court, in declaring that statute special legislation, says:

"Columbus is the only city in the State having the population named at the last Federal census, and the act therefore applies alone to that city and never can apply to any other."

This act, as will be seen, related only to the conditions existing at the last Federal census and had no future operation, and it is clear from the language of the court that the fact that the law had no future operation was the reason for its overthrow. The intent to legislate for the single city of Columbus was established beyond question in the failure of the law to provide for its future operation upon cities which might thereafter have a population of thirty-one thousand.

That the court did not declare the law unconstitutional on
37 the ground that it operated upon but one city, but because the law had no provisions for future application to cities similarly situated, is made clear by the case of Fellows *vs.* Walker, 39th Fed. Rep., 651.

The circuit court for the northern district of Ohio says:

"The constitutionality of the act is denied because it is said to be a special act conferring corporate powers; that it is special because the city of Toledo is the only city of the third grade of the first class in the State of Ohio and the only city to which this act is or can be applicable. But this objection cannot be sustained. It is well settled by authority in Ohio that the classification of municipal corporations

is valid, and that legislation which is applicable to a class is general, although there may be at that time but one city in that class."

In State *vs.* Herman, 75th Mo., 340, the act under consideration applied only to cities "having a population of one hundred thousand or more." The court expressly referred to the fact that the act was limited to then existing conditions, and held the act to be special legislation because it did not permit other cities which might thereafter have a population of 100,000 to have the benefit of its provisions.

The statute of Illinois declared special legislation by the supreme court of Illinois, in the case of Devine *vs.* Board of County Commissioners of Cook County, 84 Ill., 591, was limited to cities of more than one hundred thousand population, being applicable only to the city of Chicago. It was also limited in duration to six years. It provided for issuing bonds for the erecting of a court-house on the site heretofore used, and one of the conditions for taking advantage of the act was "recent destruction by fire of public buildings." The court in that case found that the legislation was limited in several ways to the single city of Chicago and county of Cook. No other city or county in the State had the requisite population, and the six-year limit fixed made it unreasonable to believe that any other city would obtain the necessary population within the 6 years so as to secure the benefits of the act; and when the act further re-
38 quired the court-house to be erected on the site heretofore used, for the reason that the building had recently been destroyed by fire—necessarily meaning the great Chicago fire—the court properly said that the act by its very terms excluded it from having any application to any county except the county of Cook. The intent of this law, following as it did the great Chicago fire, was too plain for discussion, and the court was compelled to hold the law to be local and special legislation.

In State *vs.* Hammer, 42 N. J. Law, 435, the law under consideration was limited as follows: "That in any city of this State where a board of assessment and revision of taxes now exists."

The court found that such boards existed at the time the act was passed in but two cities of the State, Newark and Elizabeth, and the law was held to be local or special legislation because by its terms the law "can and must ever apply to Elizabeth and Newark and no other cities." The court, however, distinctly say in that case that to be a general law it is not necessar- that it shall apply to all cities and towns.

So in Anderson *vs.* The City of Thornton, 42 N. J. Law, 487, the law applied to cities "having a population of not less than 25,000 inhabitants." Thus it was limited in its operation to present conditions, and had no provisions for future application.

The supreme court of Pennsylvania sustained the act of 1874, as its operation was made applicable in the future as well as the present—

Wheeler *vs.* Philadelphia, 27th Pa. St., 338;

but the same court held the act of 1878 to be special, as it made no provision for future application.

Commonwealth *vs.* Patton, 88th Pa. St., 258.

In Morrison *vs.* Bachert, 112 Pa. St., 322, the court says: "An act excluding perpetually from its operation counties containing more than 150,000 or less than 10,000 — is a local law."

In City of Topeka *vs.* Gillette, 5 A. & E. Corp. Cases, 290, the vice of the law was that it fixed the unreasonably short limitation of 58 days, and arbitrarily excluded from its operation "all cities not obtaining the benefit of the act within fifty-eight days after its passage;" but in State *vs.* The City of Kansas City, 31 Pac. Rep., 1102, the supreme court said:

39 "It is not necessary that the law should operate upon all cities of the State to be constitutional. If it is general and uniform throughout the State, operating upon all of a certain class or upon all who are brought within the relations and circumstances provided in the act, it is not obnoxious to the limitations against special legislation."

In State *vs.* Spaulde, 34 N. W., 165, the supreme court of Minnesota upheld a statute against alleged special legislation, and in so doing said:

"A law to be general need not operate alike upon all the inhabitants of the State or all the cities or all the villages in the State. To require that would be utterly impracticable. A law is general which operates alike upon all the inhabitants of all the cities or all the villages or other subjects of a class of such subjects of legislation. That for the purpose of legislation it may be necessary to make, and that the legislature may make, such classification is undoubted. The only practical limitation to this power is that the classification shall be based upon some natural reason; some reason suggested by necessity, by some difference in the situation and circumstances of the subjects classified, suggesting the necessity of different legislation with respect to them, and shall not be merely arbitrary, with no apparent reason except a desire to evade, under the forms of a general law, the constitutional inhibition of special legislation."

From these decisions it is evident that the grounds upon which the laws under consideration were declared to be special or local was that there was no provisions for their future operation, or, if there was, it was of an unreasonable short duration, as in the case from Kansas it was 58 days, and in the case from Illinois it was six years.

A law may be made to apply to conditions existing at the time the law is enacted, but it must also apply to similar conditions in the future. Laws usually take effect from and after their passage, and therefore their future operation is a very essential characteristic.

The limitations in the laws declared to be void by the courts in the cases above cited were purely arbitrary and without any
40 reasonable foundation. In each case they served to prevent the future general operation of the laws, and thus made those laws special, whether they were general in form or not.

From the cases of State *vs.* Kansas City and State *vs.* Spaulde, above

referred to, it is clear that to be a general law it is not necessary that it shall operate upon all of the counties or cities and towns of the State or Territory. Almost every State and Territory has classified its counties and cities by population, wealth, or otherwise, and the courts have sustained these classifications wherever they are not purely arbitrary and without reason for such discrimination. Such classification may be made by direct enactment or may be based upon circumstances and conditions which are natural, reasonable, and germane to the subject-matter of the legislative act.

The counties, cities, and towns of this Territory have been classified by law for different purposes, and these laws are valid and are not special legislation, although under them the same officer draws a larger salary for similar services in one county than in another. There is a reason for this difference in the salaries and this reason justifies the law.

A case involving such a classification and difference in salaries was taken to the Supreme Court of the United States from the Territory of Arizona, and in deciding the case the court said:

"We are of the opinion that the territorial act is not a local or special law within the meaning of the act of Congress. It is true that the practical effect of the former is to establish higher salaries for the particular officers named in some counties than for the same class of officers in other counties, but that does not make it a local or special law."

Harwood *vs.* Wenthworth, 162 U. S., 547.

In Commissioners *vs.* McMullin, 25 N. E., 677, which was a case which applied to but one city in the State at the time of the passage of the act, but there was provision for future operation, the court said:

"If it be true, as suggested, that the act is applicable to the
41 conditions existing in a single city in the State, that fact does not necessarily render it local or special legislation. It is general in its terms, and applies to all cities of the State which at the time of its passage has parts under the control of park commissioners, or that might at any time thereafter so have parks. If, because only a single city has such parks, an act general in its application to all cities would be local or special legislation, no valid act could be passed affecting such existing parks."

On the other hand, classifications and discriminations are uniformly overthrown by the courts, where they are purely arbitrary and without substantial reason. As an illustration of such arbitrary classification, take the case of Davis *vs.* Clark, 106 Pa. St., 377, wherein the statute under consideration excluded all counties having a population of 200,000 from the operation of the mechanics' lien law. It is apparent that there is no valid reason why the mechanics' lien law should not be in force throughout the State.

And in Scranton *vs.* Silkman the act allowed the appeal from assessment of taxes in counties of less than 500,000 population. The terms of this act made it purely arbitrary, as such a law should be available to every citizen of the State.

It will be seen, therefore, that while the courts will not uphold laws which by unreasonable and arbitrary limitations disclose an intent on the part of the legislature to prevent the general operation of the law, they will uphold as general laws classifications and discriminations based on various circumstances and conditions which are just, reasonable, and germaine to the subject-matter of the legislative act.

The supreme court of Pennsylvania, in the case of Lloyd *vs.* Smith, 35th Atlantic Reporter, 200, says:

"Classification of counties is therefore as permissible as classification of cities, and the legislature may determine what differences in situation, circumstances, and needs call for a difference of class, subject to the supervision of the courts as the final interpreters of the Constitution to see that it is actually classification, and not special
42 legislation under that guise. The presumption is always in favor of the legislative command, and it must prevail unless clearly transgressing the constitutional prohibition."

In State *vs.* Kansas City, 31st Pac. Rep., 1102, the court says:

"It belongs to the legislature to make the classification, and while it cannot so classify them as to make the law special in its application and results, yet many classes may properly be made. It need not be restricted to the population of municipalities, but it would seem that it might be based on the conduct or condition of the people resident therein."

In the light of these decisions we will not examine the acts involved in this case. We have already observed that the acts purport to be of general application, and therefore not in conflict with the act of Congress unless conditions imposed show that the legislative intent was to limit the operation of the acts to the county of Colfax alone, and that by the terms of the acts they could have no application to any other counties of the Territory similarly situated.

The conditions in chapter 6, relied upon by plaintiff in error, are the following:

"Provided further, that the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the then county-seat of said county; and that no proposition to remove a county-seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted upon."

On page 10 of the brief of counsel for plaintiff in error he says:

"No express words that could have been used by the legislature could limit the operation of this statute to the county of Colfax more absolutely and definitely than those employed."

And on page 13 counsel says:

"It selects the city of Raton, in the county of Colfax, as the
43 only place in New Mexico to which a county-seat may be removed."

We are unable to agree with the conclusion of the counsel. This court takes judicial notice of the cities and towns of the Territory, together with their location and population. The court knows, therefore, that at the time chapter 6, which provides for the removal

of county-seats, was enacted there were at least three counties which were subject to its operation, namely, Colfax, Lincoln, Guadalupe. Raton was a larger town than Springer, in Colfax, and more than 20 miles distant; White Oaks was a larger town than Lincoln, in Lincoln, and more than 20 miles distant, and Anton Chico was a larger town than Puerto de Luna, in Guadalupe, and more than 20 miles distant, so that counsel's contention that the act could not apply to any other than the city of Raton and the county of Colfax cannot be sustained.

It does not appear, therefore, that the legislature intended to limit the operation of the act to Colfax county, not that such is the effect; on the contrary, the act at the time of its passage applied to several counties, and had unlimited future application to all counties similarly situated.

It is not to be supposed that the act of Congress of July 30th, 1886, was intended to prohibit the passage of all territorial laws on the subject of the removal of the county-seats which were not so framed that every county-seat in every county could be removed under its provisions as soon as the law was passed, for if such was the intention of Congress or effect of the act it would be *tent*amount to prohibition of all future legislation on the subject.

Laws for the removal of county-seats are almost necessarily conditional and made applicable to all counties similarly situated. It is a matter of common knowledge that in many of the States laws have been enacted prohibiting a vote for the removal of county-seats oftener than once in 10 years, and such laws are sustained by the courts, although there is a constitutional provision prohibiting special or local legislation. There is a valid reason for such a provision. It is common knowledge that the removal of county-seats is a fruitful source of trouble and even bloodshed in the cities and
44 to-n- involved in such contests, and for that reason ease and frequency of such removals are and should be discouraged by conditional legislation; and where such laws provide for the removal of county-seats upon conditions reasonable and for the best interests of the people, if they provide for the future operation of the law upon all counties similarly situated, they are not in conflict with the above act of Congress, though but few counties may have been required conditions at the time the act is passed.

The conditions upon which county-seats may be removed under chapter 6 are:

"That the city, town, or village named in the petition shall be at least twenty miles distant and of a larger population than the then county-seat of said county."

These conditions are entirely just and reasonable in the light of what has been said, but, further, the legislature is presumed to have knowledge of the conditions existing in the Territory; also of its counties, cities, towns, and villages and of their location and population. It must be presumed to have known that most of the cities and towns of the Territory are comparatively small, and, in some instances, unsuitable for the accommodation of the court; that in many instances, especially along the railroads, new cities and towns

have been established within one or two miles of each other. Knowing these facts and conditions to exist, it is reasonable to believe that the legislature in these enactments intended that county-seats should be established in the larger cities where the courts and the people attending them could have suitable accommodations, and that hereafter county-seats shall not be located in smaller cities and towns than those in which they now are. It is also reasonable to believe that the legislature intended in fixing the twenty-mile limit to prevent cities and towns situated within a few miles of each other from engaging in those injurious contests for the supremacy for the location of the county-seat based upon the population only. The wisdom of these conditions is apparent and it is within the power of the legislature to make them.

In State *vs.* Kansas City, 31 Pac. Rep., 1101, an act of the legislature providing for the consolidation of cities of a certain
45 class and fixing three-fourths of a mile apart and not less than 15,000 inhabitants as conditions to consolidation was sustained by the court against alleged special legislation.

Another condition is as follows:

"That no proposition to remove a county-seat from a city, town, or village situated on a railroad to one not so situated, etc."

In inserting this conditions the legislature intended to prevent all counties, after the passage of the act, from removing their county-seats from towns situated on a railroad to those not upon a railroad. Accessibility should always be considered in locating county-seats, as business can be transacted at county-seats situated upon a railroad more expeditiously and economically. This condition is both germane and reasonable, and a similar provision has been considered with approval in the case of—

Edmunds *vs.* Herbandson, 50 N. W., 973.

The last provisions for our consideration is that which provides the county-seats shall not be removed unless the parties seeking the removal to some other city or town shall provide, free of cost to the county, a suitable site for the court-house and jail, and also contribute at least $8,000 towards the expense of erecting a court-house and jail. It is a matter of common knowledge that the removal of a county-seat is a matter of larger expense to the county, mainly caused by the erection of a new court-house and jail, and we see nothing unreasonable or improper in a legislative provision enabling counties to secure aid in the erection of new buildings from the city, town, or persons benefited by the removal of the county-seat. It is a matter of common notoriety that the location of public enterprises of corporations and individuals are secured in this way by the different cities and towns throughout the county, and we see no valid reason for denying this privilege to counties in case of removal of county-seats, especially when it is remembered that such removals should not be facilitated.

All of these provisions apply to all future removals of county-seats, and we are unable to see how any of them confine the
46 operation of the law to Colfax county or make this law obnoxious to the act of Congress. These provisos are simply

conditions precedent to all future removals, and are clearly within the power of the legislature to enact.

In Cummings *vs.* City of Chicago, 33 N. E., 855, the court says:

"The legislature, for reasons appearing satisfactory to it, saw fit not to apply to the smaller assessments in the larger cities of the State the somewhat cumbersome mode of collecting the same, provided for in the act under consideration. Whether this was wise or unwise is a question for legislative consideration. Reasons for the distinction existing in the legislative contemplation, it was lawful for the legislature to thus discriminate, if enacted into a general law, uniform in its application to all cities of the State similarly situated."

Passing now to the consideration of chapter 33, we find that the portion designated by counsel for plaintiff in error as special legislation is the following paragraph of section 1:

"Hereafter, when the county-seat of any county in this Territory shall be established at any incorporated city, and the council of such city shall desire to join with said county in the erection of a public building to be used as a court-house and jail, as well as for city purposes."

It must be borne in mind that this is not an act providing for the removal of county-seats, but is an act authorizing incorporated cities, in case they desire to do so, to join with the county and issue bonds to aid the erection and use of the public buildings by both the county and the city in all cases where a county-seat shall be removed to such city.

Counsel for plaintiffs in error admit that cities may be classified, and that the courts uphold such classification, where the terms are not purely arbitrary, but are essential to the objects of the law, but insist that the classification made by this law cannot be sustained because the law does not apply to all the incorporated cities of the Territory.

47 It is true that the law did not have a uniform application to all of the incorporated cities at the time of its enactment, and it is true that the law was not applicable to Santa Fé, Socorro, and Silver City, because these cities were incorporated and were county-seats of their respective counties when the law was passed, but it does not follow that because the law is not uniform of operation upon all such cities that it is not a general law.

The doctrine announced by the supreme court of New Jersey in the case of State *vs.* Hammer seems to have been sustained by the courts generally. In that case the court said:

"But it has further been considered that these classes also may be subdivided by the legislature so that a law will be general which yet touches only a subdivision. * * * Thus a statute giving to all cities boardering upon tide water the power to construct docks or to establish quarantine regulations, or providing that in all towns having volunteer fire departments the members of the department should choose a commission to govern them would, I presume, be valid. These groups would, according to the principle laid down, be naturally classified for legislation touching their peculiar qualities, and such legislation, though affecting them alone, would be

general. * * * There must be a substantial distinction having reference to the subject-matter of the proposed legislation between the places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree at least, account for or justify the restriction of the legislation."

Now, in the act under consideration the "marks of distinction" between the cities included and excluded are patent. No one can doubt the economy and beneficial character of the legislation proposed by the act. Is it, therefore, reasonable to believe that the act was intended to make it impossible for any other cities or counties to have the benefit of this wise legislation simply because there was one or two more counties to which it was wholly inapplicable and undesirable? We think not. The legislature is charged with a knowledge of the facts that the county-seats of the counties of
48 Santa Fé, Socorro, and Grant had been for many years established in incorporated cities and had already erected court-house and jails, without co-operation as provided in chapter 33; that for this reason the proposed legislation could be of no benefit to such cities or counties, and, on the contrary, its application to them would be without justification. The intent of the legislature undoubtedly was to apply the law to all cities and counties similarly situated, having a present application to all cities within the provisions of the act and a future application to all cities in the territory attaining similar conditions. The necessity for the discrimination made in this act is apparent and fully justifies its enactment as general legislation, which it purports to be.

Taking the view that the cities of Santa Fé, Socorro, and Silver City are excluded from the operation of the act, the exclusion arises from circumstances rather than from the terms of the act.

"It is one thing to assert that all except a single object will be forever kept from the class by circumstances and another and entirely different thing to attempt to exclude all others by the terms of the law."

Edmunds *vs.* Herbrandson, 50 N. W. Rep., 973.

The word "hereafter" is so used as to make the intent of the legislature in using it somewhat doubtful. It is contended by plaintiff in error that it relates to the establishment of county-seats, while the defendant in error insists that the word "hereafter" relates to power to issue bonds, and that a proper and reasonable construction of the act would be that hereafter the city council of any incorporated city may issue bonds when the county-seat of any county in this Territory shall be established, etc.

Now, when it is considered that the purpose of the act is not the removal of county-seats, but is for the purpose of authorizing the issuance of bonds under certain circumstances, and for certain purposes defined in the act, it would seem that the latter view is more in accord with the purpose of the legislature than the view taken by the plaintiffs in error. To determine the intent of the legislature from a strict grammatical construction of the language of the
49 act would be of doubtful propriety in this Territory; there-

fore such construction should be adopted as will best carry into effect and sustain the law.

"Whenever an act of the legislature can be so construed and applied as to avoid a conflict with the Constitution, and give it the force of law, such construction should be adopted by the court."

Peel Splint Coal Co. *vs.* State, 15 S. E., 1000 (W. Va.).
Owen *vs.* City of Sioux City, 59 N. W., 5.

We are of the opinion that whether these three cities were or were not excluded from the operation of the act is not material; the acts are not special or local legislation within the meaning of the act of Congress of July 30th, 1886.

It follows from this conclusion that the court below committed no error in awarding the peremptory writ of mandamus upon the hearing, and the command of the writ having been obeyed and the bonds involved issued, the judgment of the court below should not be disturbed.

The judgment of the court below is affirmed with costs.

JOHN R. McFIE,
Associate Justice.

We concur:
WILLIAM J. MILLS, *C. J.*
FRANK W. PARKER, *A. J.*
J. W. CRUMPACKER, *A. J.*

Judge Leland did not participate in this decision on account of illness.

50 In the Supreme Court of the Territory of New Mexico, July Term, A. D. 1898.

TERRITORY OF NEW MEXICO, *County of Santa Fé, Supreme Court,* } *ss:*

I, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing forty-nine (49) pages contain a full, true, and perfect copy of the record and proceedings, pleadings, and opinion filed in the above-entitled cause, which is transmitted to the Supreme Court of the United States in accordance with the appeal hereinbefore taken.

Witness my hand and the seal of the supreme court of the Territory of New Mexico this 11th day of January, A. D. 1900.

[Seal Supreme Court, Territory of New Mexico.]

JOSÉ D. SENA,
Clerk of the Supreme Court of the Territory of New Mexico.

Endorsed on cover: File No., 17,694. New Mexico Territory supreme court. Term No., 234. John E. Codlin, chairman, & Manuel M. Salazar, clerk of the board of county commissioners of Colfax county, appellants, *vs.* Charles B. Kohlhousen, Christopher N. Blackwell, Alfred C. Price, & Timothy F. McAuliffe. Filed March 28th, 1900.

IN THE SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM, 1900.

No._____

JOHN E. CODLIN, Chairman of the Board of County Commissioners of Colfax County, New Mexico, and
MANUEL M. SALAZAR, Clerk of the Board of County Commissioners of Colfax County, New Mexico,
Plaintiffs in Error.
vs.
CHARLES B. KOHLHOUSEN,
CHRISTOPHER N. BLACKWELL,
ALFRED C. PRICE, and
TIMOTHY F. McAULIFFE.
Defendants in Error.

Statement, Brief and Argument of Plaintiffs in Error.

STATEMENT.

A petition for a writ of mandamus was filed by the defendants in error, in the district court, fourth judicial district, Territory of New Mexico, in and for the County of Colfax, by which it was sought to compel the plaintiffs in error to sign, execute and deliver, in their official capacity, as chairman and clerk, respectively, of the board of county commissioners of Colfax county, New Mexico, certain bonds of that county, issued by the board of county com-

missioners under and pursuant to certain acts of the legislative assembly of the Territory of New Mexico.

There was an order upon the plaintiffs in error to show cause why the writ should not issue as prayed for. The plaintiffs in error answered denying the constitutionality of these legislative enactments. The district court, upon the petition and answer, after hearing and argument, overruled the answer. The peremptory writ of mandamus issued and was obeyed by the plaintiffs in error.

The case was heard in the supreme court of New Mexico on writ of error sued out by the plaintiffs in error. In that court the order of the district court overruling the answer and issuing the writ of mandamus was affirmed.

STATUTES.

The following acts of the Thirty-second Legislative Assembly of the Territory of New Mexico are claimed to be unconstitutional, in that they are special and in contravention of the act of congress, approved July 30, 1886, entitled "An Act to prohibit the passage of local or special laws in the territories of the United States, to limit territorial indebtedness and for other purposes," and known as the "Springer act."

"An act in relation to removal of county seats, approved February 5, 1897.

"Be it enacted by the Legislative Assembly of the Territory of New Mexico:

"Section 1. Whenever the citizens of any county in this territory shall present a petition to the board of county commissioners, signed by qualified electors of said county, equal in number to at least one-half the legal votes cast at the last preceding general election, asking for the removal of the county seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county, at the next general election, if the same is to occur within one year from the time of presenting said petition, otherwise at a special election

to be called for that purpose within six weeks from the date of presenting said petition: *Provided,* That before making such order the said commissioners shall require a written guaranty from responsible citizens of the place to which the petitioners desire the county seat removed, that they will provide free of cost to the county, a suitable site and sufficient ground for a court house and jail, and that they will pay to the county treasurer a sum not less than eight thousand dollars, to be used in constructing such court house and jail, in the event that the proposition for removal shall receive a majority of the votes cast at such election; and *Provided, further,* That the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the then county seat of said county; and that no proposition to remove a county seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted upon, and that no vote shall be ordered on substantially the same proposition oftener than once in ten years.

"SEC. 2. The county commissioners shall cause a certified copy of such order to be published in some newspaper of general circulation published in said county for four consecutive weeks immediately prior to such election, and by hand bills posted up at three of the most public places in each precinct at least four weeks prior to such election.

"The ballots to be voted at such election shall have printed thereon the words: 'For County Seat———,' with the name of the place for which the voter desires to cast his ballot either printed or written thereon. Such ballots shall be canvassed as in elections for county officers and the returns of such election shall be certified by the probate clerk to the territorial secretary together with a certified copy of the order of the county commissioners and a sworn certificate of the publication thereof, to be filed in the office of said secretary.

"SEC. 3. Should a majority of the votes at such election be cast in favor of the place named in the petition, the county seat shall be removed to such place and it shall be the duty of the county commissioners, so soon as the citizens of such place shall have delivered the deed and paid over the sum of money mentioned in the written guaranty provided for in section 1 of this act, to cause to be erected upon the site so provided a court house and jail to cost not to exceed

three times the amount so paid by such citizens, including said amount.

"For the purpose of such construction said county commissioners are hereby authorized to issue coupon bonds of said county for such time and bearing such rate of interest, not to exceed six per cent. per annum, as they may deem best, such bonds to be sold at par, or taken at par in payment for such construction. The contract for the construction of such buildings shall be let to the lowest responsible bidder after advertising the time and place of opening sealed bids for the same in a newspaper published in said county, for four consecutive weeks, such contractor to furnish a good and sufficient bond for the completion of such buildings according to the plans and specifications.

"SEC. 4. So soon as convenient buildings can be had at such new county seat the courts for said county shall be held therein and so soon as the new court house and jail shall have been completed, the county commissioners shall cause all the county records, county officers, and property pertaining thereto, and all county prisoners, to be removed to the new county seat. Any county commissioner or other county officer who shall neglect or refuse to carry out any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than $500 nor more than $1,000, which fine may be collected by a suit on his official bond and shall be paid over to the county treasurer for the general county fund. It shall be the duty of the governor of the territory to immediately remove from office any officer who shall neglect or refuse to carry out any of the provisions of this act and to appoint his successor.

"SEC. 5. When a new county seat shall have been established in accordance with this act the county commissioners shall cause the notice thereof to be published in some newspaper of general circulation published in said county for four consecutive weeks, and all suits, actions, process, prosecutions and proceedings already commenced or that may be commenced shall proceed to final judgment and execution at such new county seat.

"SEC. 6. All laws or parts of laws in conflict with any of the provisions of this act are hereby repealed, and this act shall take effect and be in force from and after its passage."

"An act relating to municipal corporations and for other purposes, approved March 10, 1897.

"*Be it enacted by the Legislative Assembly of the Territory of New Mexico:*

"SECTION 1. Hereafter, when the county seat of any county in this territory shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds of such city for the purpose of such construction and the purchase of suitable grounds for such buildings, not to exceed in amount 3 per cent. upon the total value of all taxable property within the limits of such city, as shown by the last preceding general assessment for the purpose of taxation: *Provided*, The total indebtedness of such city, including such bonds, shall not exceed four per centum of the total value of all taxable property within the limits of such city, according to such last preceding general assessment.

"Such bonds may be payable in such time and manner and with such rate of interest not to exceed 6 per cent. per annum as such council shall prescribe; and it shall be the duty of such council, or the county commissioners of said county, as the case may be, to cause to be levied and collected in the manner and at the time of the levying and collecting other taxes each year and until such bonds and interest thereon shall be fully paid, a special tax upon all taxable property in the said city sufficient in amount to meet the interest and create a sinking fund to pay said bonds at maturity in accordance with the provisions thereof.

"SEC. 2. The county commissioners of such county are hereby authorized to join with the council of such city in the construction of such buildings: *Provided*, The par value of the bonds so issued and contributed by such city shall equal the cost of the grounds for such building. The amount of the cash contribution now provided by law to be made by the city to which the county seat shall be removed, and a sufficient sum in addition thereto to cover the costs of the additional space to be used for city purposes, and upon completion of said building, to give such city a lease for the perpetual use of such portion of said building as it may be entitled to; also to arrange for the keeping of city prisoners in said jail.

"SEC. 3. Such bonds shall be sold at par or taken

at par in payment for grounds or building, and such bonds shall be delivered to the county commissioner, or to such person as they may designate to have charge of the construction and payment for such building. The contract for such construction shall be let by the county commissioners, and said grounds and building shall belong to the county, and the county shall have the right to charge and collect from such city its proper share of the cost of maintenance, repair and insurance thereof.

"SEC. 4. Such county commissioners shall receive and accept bonds of such city, issued according to this act, together with an agreement duly executed by the owners of suitable grounds for said public building, to execute a good and sufficient deed, conveying the same to said county in exchange for a certain amount of said bonds in lieu of the cash contribution and guaranty now provided by law in case of removal of county seats.

"SEC. 5. In case of a removal of the county seat as now provided by law and the issue of bonds by any county for the purpose of constructing county buildings, it shall be the duty of the county commissioners of such county to cause to be levied and collected at the time and in the manner of levying and collecting other taxes, each year until said bonds and the interest thereon are fully paid, a special tax upon all taxable property within said county sufficient to pay the interest on such bonds and to create a sinking fund to retire said bonds at maturity, in accordance with the provisions thereof.

"This act to be in full force and effect from and after its passage and approval."

The act of congress of which it is claimed that the two above mentioned acts are in contravention, is in part as follows, to-wit:

"An act to prohibit the passage of local or special laws in the territories of the United States, to limit territorial indebtedness, and for other purposes."

"*Be it enacted, etc.*, That the legislatures of the territories of the United States, now or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases, that is to say:

* * * * * *

ASSIGNMENTS OF ERROR.

I.

The Supreme Court of New Mexico erred in affirming the judgment and order of the District Court of the fourth judicial district of New Mexico in and for the county of Colfax, New Mexico, overruling the answer of the plaintiffs in error and in ordering a peremptory writ of mandamus in said cause, as prayed for by the defendants in error.

II.

The Supreme Court of New Mexico committed divers other errors apparent upon the face of the record.

"Locating or changing county seats.
"Regulating county and township affairs.
* * * * * *

"In all other cases where a general law can be made applicable, no special law shall be enacted in any of the territories of the United States by the territorial legislatures thereof."
* * * * * *

BRIEF AND ARGUMENT.

Chapter 6 of the Acts of the Thirty-second Legislative Assembly of New Mexico is invalid and unconstitutional. It is special legislation and contrary to the provisions of the Act of Congress, approved July 30, 1886.

Legislative enactments are special when they do not in their subject, operation or immediate necessary results, affect the people or their property in general.

The New Mexico statute in relation to the removal of county seats is repugnant to the provisions of the act of congress, approved July 30, 1886, c., 818, 24 *Stat.* 170, in that the act is not general in its application: the conditions and limitations in the act contained are not germane to the subject matter of the statute.

Acts which classify cities in a state according to population and provide special laws for each class are not obnoxious to constitutional provisions prohibiting special legislation, but where, in view of the facts, the practical result of the act is to confer power upon one or upon some very limited number of municipalities, the court will take judicial notice of such facts and hold the act invalid as a piece of special legislation.

There is authority for classification of cities by population for certain purposes. The New Mexico statute is a classification in arbitrary terms, and not relating to the objects and purposes of the statute. The facts upon which the classification is made to depend are arbitrary, not ger-

mane and not essential to the objects of the law and can not be sustained by the court.

If such a classification can be sanctioned, then the act of congress is of small avail as there are few objects that can not be arbitrarily associated, if all that is requisite for the purpose of legislation is to designate them by some quality, some geographical characteristic, no matter what it may be, which will so distinguish them as to mark them as a distinct class.

Why not have said: "All counties having a population of 20,000 and containing not less than 100 miles of operated railroad or 100,000 head of cattle?" Why not have said: 'All counties having not less than 100 miles of operated railroad and watered by the Rio Grande?" If the statute in question is worthy of the title of a general law, the one equally as deserving would be that which would classify counties by the amount of capital invested in irrigation enterprises, the number of miles of operated railway or irrigating canals, or the number of incorporated cities in a county.

A law may be general in its wording and may apply to the whole of a group of objects having characteristics sufficiently marked and important to make them a class by themselves, and yet such a law may be in contravention of the congressional inhibition against special legislation in the territories.

In State vs. Hammer, 42 *N. J. Law, p.* 435, the court says:

> "But the true principle requires something more than a mere classification by such characteristics as will serve to classify, for the characteristics must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having reference to the subject matter of the proposed legislation, between the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things as will, in some reasonable degree, at least, account for or justify the restric-

tion of the legislation. Principles of this sort can be best elucidated by examples. I have already given a sample of a merely arbitrary classification, founded on no casual relation between the subject matter of such legislation and the things so classified. A sample of the other, or legitimate kind, would be signified in a law that should give to all cities in the state situated on tide-water the privilege of using such water in connection with their sewers. In such an enactment, but a part of the cities of the state would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation. In the two classes of instances thus exemplified, the basis of the classification of the one would be by a reference to marks of distinction having no connection with the substance of the supposed statute; in the former, the opposite of this would obtain, so that in the former, the classification would be formal and arbitrary; in the latter, substantial and springing out of the nature of the subject of the legislation. The present law is seemingly of the former kind. The class to which it is made applicable is designated and selected by the mark of each of its members, being possessed of a certain kind of board of officers, a circumstance having no connection but a formal one with the subject matter of the law, and in no way indicating a reasonable ground for making these particular places the object of such special legislation. In all but mere form, as I have said, these places might as well have been designated by name as by reference to these organic bodies possessed by them, and the effect of this law would have been precisely the same."

In the New Mexico statute, is there anything substantial and springing out of the nature of the subject of the removal of county seats in a proviso which limits a classification to cases of removal only where responsible citizens shall give a written guaranty for suitable grounds and shall pay eight thousand dollars into the county treasury, or that the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the then county seat?

In this statute restriction is imposed upon restriction, until the generality of the law is hidden and impossible.

A proviso that the sum of eight thousand dollars shall first be paid into the county treasury is arbitrary, speculative and is a condition that the law by any terms can not control. It is an event wholly within the control of individuals whose interest is more apt to be speculative than for the real and best interests of the entire people of a county. It is an invitation to the passing of fraudulent legislation for individuals bent on the promotion of private interests at the expense of the public. The courts should insist upon a full compliance with the letter and spirit of the act of congress and should not hesitate to condemn all efforts to secure local legislation under the guise of general laws. No new rule of law is contended for. All that is asked is that the legislative agents of the people shall be subject to the same rules which are laid down for the government of individuals in respect to statutory law and that is "when anything is forbidden to be done, whatever tends or leads to it, as the means of compassing it, it forbidden at the same time."

Every public interest might be best conserved, in a given case, for the removal of a county seat from a place where the population is only one inhabitant greater than that of the place where the county seat ought in justice to all the people be located, and still under the designing proviso of the New Mexico statute, a petition for such a removal could not even be considered.

Under these provisos, there are county seats in New Mexico which never could be removed, notably the county seats of San Miguel and Bernalillo counties.

An inhibition of the congress of the United States is certainly as obligatory upon a New Mexico legislature as are the valid enactments of that potent body upon the individuals within the jurisdiction of the territory, and where a measure, as does this statute, bears upon its face the evidence of having been drawn in general terms for the pur-

pose of overreaching the act of congress, while confined to local districts by reason of the arbitrary provisos, it is as much the duty of the courts to interpose to prevent the consummation of the fraud upon congress, and the wrong upon individuals and communities, as though the act was in every possible respect local in its character and enacted in obvious disregard of the act of congress. In other words the courts should forbid the prostitution of an act of congress to the designs of selfishness under any pretext whatever. If the object sought to be accomplished is of real public importance; if the principles sought to be put in practice are such as promise to promote the welfare of the territory, they are such that they may be brought about by a general law, or they may be postponed until the public necessity shall require a change in the act of congress; but so long as that act is the guide by which the affairs of this territory are to be conducted, it is unwise to permit the plain terms of the act to be disregarded by any cunning jugglery of words.

Whether any particular local improvement is made or not, is of only the most incidental importance, compared with the preservation of that which amounts to a constitution, so far as New Mexico is concerned, as well as also the continued confidence of the people in the integrity, wisdom, impartiality and good faith of the judiciary.

The judiciary, as a co-ordinate branch of the government, while owing respect to the legislative department, is bound to see to it that that body does not transcend the limitations fixed by the higher legislative will of the congress of the United States, and this duty equally requires that the enactment shall be free from fraud upon the sovereign power.

An aroused public conscience is always useful in giving vigor and efficiency to the administration of the law, and we owe it to the people that we discountenance all efforts at over-riding an act of congress, either for the purpose of promoting our own private ends, or the supposed needs of

our communities. On all occasions the legislature should be kept within the limits imposed by congress and the courts should stand guard at the boundary line and forbid any encroachment upon the rights of the people as defined and declared in the acts of that body which controls the powers of a territorial legislature.

The principle of construction herein contended for is supported by the following authority:

State vs. New Brunswick, 42 *N. J. L.*, 51.

Van Giesen vs. Bloomfield, 18 *Vroom*, 442.

Water Company vs. Consumers' W. Co., 44 *N. J. Eq.*, 427.

Gibbs vs. Morgan, 39 *N. J. Eq.*, 126.

Harwood vs. Wentworth, 162 *U. S.*, 547.

State vs. Trenton, 42 *N. J. L.*, 486.

23 *A. E. Ency. Law, p.* 149. *Cases cited under Note* 1, *p.* 150.

Chapter 33 of the Laws of 1897 is unconstitutional, being contrary to the provisions of the "Springer Act," prohibiting the passage of special laws regulating county and township affairs.

Section 1 of Chapter 33 of the Laws of 1897, provides:

"Hereafter, when the county seat of any county in this territory shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds of such city for the purpose of such construction and the purchase of suitable grounds for such buildings not to exceed in amount 3 per cent. upon the total value of all the taxable property within the limits of such city, as shown by the last preceding general assessment for the purpose of taxation: *Provided*, The total indebtedness of such city, including such bonds shall not exceed 4 per centum of the total value of all taxable property

within the limits of such city according to such last preceding general assessment.

* * * * * *

It is contended that this section is special legislation. We are asked to justify it on the ground of classification. The classification is but a mere pretext for which no warrant can be found in the decisions of any court. The courts can not license such indiscriminate classification as a mere subterfuge for the enactment of local laws.

The court will take judicial notice of conditions as they existed at the time of the passage of the act in question, as well as the conditions today. At the time of the enactment of this law, the City of Raton was the only incorporated city to which a county seat could be removed under the provisions of Chapter 6 of the laws of the same session. By its very terms the section can apply only to counties whose county seats shall be *hereafter* established at an incorporated city. By the designation of a time subsequent to the passage of the act, the cities of Santa Fe, Socorro and Silver City, being already incorporated cities and county seats, are forever excluded from the operation of the law.

As was said in *Com. vs. Patton*, 88 *Penna. St., p.* 258—

> "It is no part of our business to discuss the wisdom of this legislation. However vicious in principle we might regard it, our plain duty is to enforce it, provided it is not in conflict with the fundamental law. It requires but a glance at the act to see that it is an attempt to evade the constitution. I is special legislation under the attempted guise of a general law. Of all forms of special legislation this is the most vicious. * * * The act was doubtless regarded by its framers as a classification of counties, but it is not so, nor does any good reason occur to my mind why there should be such classification. If there be such reasons, amounting to a necessity therefor, we shall probably hear of them in due season. In the meantime, classification which is grounded in no necessity and has for its sole object an evasion of the constitution, will not be encouraged."

In *Morrison vs. Bachert*, 112 *Pa. St.*, 322, 5 *At l. Rep.* 739, with reference to the constitutional inhibition against

special legislation regulating the affairs of counties, cities, etc., it was declared:—

> "It was a wise provision and will be sternly enforced. It is our purpose to adhere rigidly to that instrument that the people may not be deprived of its benefits. It ought to be unnecessary for this court to make this judicial declaration, but it is proper to do so, in view of the amount of legislation which is periodically placed upon the statute book in entire disregard of the fundamental law. Much of this legislation may remain unchallenged for years, only to be overturned when it reaches this court. In the meantime parties may have acted upon it, rights may have grown up and the inconveniences and losses entailed thereby may not be inconsiderable. As we view it, this note of warning at this time is needed."

In support of the doctrine announced in *Morrison vs. Bachert, supra*, the following cases are cited:

Davis vs. Clark, 106 *Pa. St.* 377.

McCarthy vs. Commissioners, 2 *Atl. Rep.*, 423.

School District Appeal, 6 *Atl. Rep.*, 158.

Scranton vs. Silkman, 113 *Pa. St.*, 191.

Strine vs. Foltz, 113 *Pa. St.*, 6 *Atl.*, 206.

Philadelphia vs. Church, 8 *Atl. Rep.*, 241.

Weinman vs. Railroad Co., 12 *Atl. Rep.*, 288.

In *Weinman vs. Railway Company, supra*, it was held that an act providing for the incorporation and regulation of street railway companies, in cities of the second and third classes, was both special and local legislation, and therefore unconstitutional: special, because it relates to only a few of the general class known as street railway companies, and, local, in that its operations are confined to specified localities.

Under Chapter 33 of the acts of 1897, the law can only apply at present to the City of Raton, and never can apply to the Cities of Santa Fe, Socorro and Silver City. The act not being applicable to all incorporated cities which are county seats, viz: the class to which the act relates, is local

and special; is grounded in no necessity, and has for its sole object an evasion of the act of Congress. The purpose of the act of Congress was not to limit legislation, but merely to prohibit the doing, by special and local laws, that which could be accomplished by general laws. It relates not to the substance, but to the method of legislation, and imperatively demands the enactment of general, instead of local and special laws, whenever the former are at all practicable.

Scowden's Appeal, 96 *Pa St.* 422.

It may, perhaps, be suggested that such provisions of this act as are not in harmony with the Springer act may be eliminated without destroying other provisions thereof, but that is no answer to the crowning vice of unnecessary and excessive classification which stands out in bold relief on the face of both Chapters 6 and 33 of the acts of the Thirty-second Legislative Assembly. There may be many private reasons why the City of Raton should be the county seat of Colfax county, and be authorized to issue bonds to pay for a court house and jail, but there is no reason for upholding a law, clearly unconstitutional, merely that private ends may be subserved, to the loss of other taxpayers, equally as deserving, but less fortunate in the possession of this world's goods.

It may be stated by counsel for the defendants in error that this statute is not a regulation of county affairs. That it is such is too plain for argument. Furthermore, the "Springer Act" provides that the territorial legislature shall pass no local or special laws where a general law can be made applicable.

On the whole subject of necessity for classification, which is always the excuse offered by persons seeking to sustain such a law, the language used in *Agar's Appeal, supra,* is peculiarly applicable in the case at bar. In that case, the court said:

"It has also been suggested that the question of neces-

sity for classification and the extent thereof, as well as of what are local or special laws, is a legislative and not a judicial question. The answer to that is obvious. The people in their wisdom have seen fit not only to prescribe the form of enacting laws, but also, as to certain subjects, the method of legislation, by ordaining that no local or special law relating to those subjects shall be passed. Whether, in any given case, the legislature has transcended its power and passed a law in conflict with that limitation is essentially a question of law, and must necessarily be decided by the courts. To warrant a conclusion that the people, in ordaining such limitations, intended to invest their lawmakers with judicial power, and thus make them final arbiters of the validity of their own acts, would require the clearest and most emphatic language to that effect. No such intention is expressed in the constitution, and none can be inferred from any of its provisions. That those limitations were designed to establish a fixed and permanent rule cannot be doubted; but if the ultimate application of that rule were to rest solely on the judgment of the body on which it was intended to operate, nothing could be more flexible. As was well said in *Pell vs. Newark*, 40 *N. J. L.* 71, 80, 'No standard could be established by which the lawmaker could be guided, and what might be rejected at one session as improper might become a law at the next, and thus the rule would fluctuate with the everchanging membership of that body. The validity of an act would depend, not so much upon the fixed rule of the constitution, as upon the liberality or strictness with which successive legislatures, under the pressure of local influences, might determine to interpret the restraint upon their own action. That the legislature would act in good faith must be presumed. Purity of motive, and a desire to keep within the prescribed limitations must be conceded to its members at all times; but that the people should have deliberately framed and imbedded in their organic law a provision to prohibit special legislation where general laws might be passed, and, at the same time, should have intended to put legislative action beyond review, where there was a clear infraction of the prohibition, is a proposition to which it seems impossible to assent.' No such proposition can be entertained by the courts without abandoning one of the most important branches of jurisdiction committed to them by the fundamental law, viz: the power to ultimately determine whether or not a given law

is local or special, and has been passed in disregard of the constitutional limitation that has been placed upon the power of the legislature."

State vs. Pugh, I. N. E. Rep., and cases cited, p. 439.

All acts or parts of acts attempting to create a classification of counties or cities by a voting population, which are confined in their operation to the existing state of facts at the time of their passage, or to any fixed date prior thereto, or which by any device or subterfuge exclude the other counties or cities from ever coming within their provisions, or based upon any classification which in relation to the subject embraced in the act, is purely illusory, or founded upon unreasonable, odious or absurd distinctions, have always been held unconstitutional and void.

State vs. Donovan (*Nev.*), 15 *Pac. Rep.*, 783.

It is the contention of plaintiffs in error that the writ of mandamus should not have been ordered by the court. That both Chapters 6 and 33 of the Laws of 1897 are and should have been held to be unconstitutional in that they are special and local in their operation and effect, and do not constitute a proper classification under the great weight of authority.

Respectfully submitted,

R. E. TWITCHELL,
Attorney for Plaintiffs in Error.

No. 234.

APR 5 1901

Brf. of Jones for Appellee (on mo

Filed April 5, 1901.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1900.

No. 234.

JOHN E. CODLIN, Chairman of the Board of County Commissioners of Colfax County, New Mexico, and MANUEL M. SALAZAR, Clerk of the Board of County Commissioners of Colfax County, New Mexico, *Appellants*,

vs.

CHARLES B. KOHLHOUSER, CHRISTOPHER N. BLACKWELL, ALFRED C. PRICE, and TIMOTHY F. McAULIFFE, *Appellees*.

Appeal from the Supreme Court of New Mexico.

MOTION AND BRIEF OF APPELLEE.

ANDRIEUS A. JONES,
Attorney for Appellees.

GIBSON PRINT, LAW TERMS

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MOTION AND BRIEF OF APPELLEES.

ANDRIEUS A. JONES.
Attorney for Appellees.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

John E. Codlin, Chairman of the Board of County Commissioners of Colfax County, New Mexico, and Manuel M. Salazar, Clerk of the Board of County Commissioners of Colfax County, New Mexico, *Appellants*,

vs.

Charles B. Kohlhousen, et al.,

Appellees.

Now come the appellees in the above entitled cause and move the court to dismiss the writ of error in said cause and for affirmance of the judgment of the Supreme Court of the Territory of New Mexico, for the following reasons, towit:

First:—There is no longer any substantial legal controversy between the parties to said cause.

Second:—Because any judgment which this court might render in said cause could not be made effectual.

Third:—Because the appellees at the time the writ of error was sued out in this cause were not then respectively the chairman and clerk of the board of county commissioners of Colfax County.

In support of this motion the appellees file herewith an affidavit marked Exhibit A.

ANDRIEUS A. JONES,
Attorney for Appellees.

EXHIBIT A.

In the Supreme Court of the United States, October Term, A. D. 1900.

John E. Codlin, Chairman of the Board of County Commissioners of Colfax County, New Mexico, and Manuel M. Salazar, Clerk of the Board of County Commissioners of Colfax County, New Mexico, *Appellants,*

vs.

Charles B. Kohlhousen, et al.,

Appellees.

Territory of New Mexico, } ss.
County of Colfax. }

Christopher N. Blackwell being first duly sworn according to law deposes and says, that he is one of the appellees in the above entitled cause. Affiant further states that John E. Codlin, one of the appellants, ceased to be chairman or a member of the board of county commissioners of Colfax County, New Mexico, in the month of January, 1899; and that Manuel M. Salazar ceased to be clerk of the board of county commissioners of Colfax County, New Mexico, during or prior to the month of March, 1899.

Affiant further states that the bonds of Colfax County, New Mexico, referred to in the transcript of record in this cause were on or before the 9th day of August, A. D. 1898, negotiated and sold for the benefit of said county, and that the proceeds derived therefrom were afterwards used for the benefit of said county in construction of the court house and jail referred to in the transcript of record in this cause; and that said court house and jail were completed on or about the 1st day of January, 1899, and the same have since been used for county purposes and the holding of courts, and

that all of the county officials now have their offices in said building.

CHRISTOPHER N. BLACKWELL.

Subscribed and sworn to before me this 7th day of March, A. D. 1901. R. H. AYERS,
(Notarial Seal.) Notary Public.

BRIEF ON MOTION.

At the time the appeal from the Supreme Court of the Territory of New Mexico was taken in this cause, neither of the appellants was an official of Colfax County, New Mexico, and the bonds referred to in this proceeding were issued and sold for the benefit of Colfax County. The proceeds from these bonds were used in the construction of the court house and jail, and these buildings were being used for county purposes and the holding of courts.

Under this state of facts, it is submitted that the appeal in this cause should be dismissed for the reasons set forth in the motion printed herewith.

"The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence. *Lord v. Veazie*, 8 *How.* 251; *Cal-*

ifornia v. San Pablo & Tulare Railroad, 149, U. S. 305."

Mills v. Green, 159 *U. S.* 653.

"The fact that there is no controversy between parties to the record ought, in the interest of a pure administration of justice, to be allowed to be shown at any time before the decision of the case. Any other rule would put it in the power of designing persons to bring up a feigned issue in order to obtain a decision of this court upon a question involving the rights of others who have no opportunity to be heard."

Little v. Bowers, 134 *U. S.* 558.

The bonds which the appellants were required by mandamus in this case to execute having been sold, no one is interested in their validity save the purchasers, and they are not parties to this suit.

BRIEF ON MERITS.

STATEMENT.

In pursuance of the provisions of Chapter VI, of the laws of 1897, a petition was presented to the Board of County Commissioners of Colfax County, requesting that the question of the removal of the county seat from Springer, New Mexico, to Raton, New Mexico, should be submitted to a vote of the electors of said county of Colfax. This petition was in due form and thereafter such question was submitted to the voters of said county at a special election held for that purpose and resulted in favor of granting the petition by an overwhelming majority. After it was thus decided to remove the county-seat from Springer to Raton, the county commissioners and the city council, under and in pursuance of Chapter 33, of the laws of 1897, entered into a contract for the erection in the City of Raton of a court house and jail, the court house to

be used in part by the City of Raton; the city and county each contributing to the construction of the building as provided for in Chapter 33. Under the provisions of these acts for the purpose of erecting these buildings the county commissioners decided to issue bonds, and the chairman of the board of county commissioners and the clerk of the board were instructed and directed to execute the bonds of Colfax county for such purpose. The bonds were prepared in due form, but the chairman of the board of county commissioners and the clerk refused to execute the same as ordered by the board for the reason that the acts of the legislative assembly authorizing the issuance of such bonds were unconstitutional. The appellees then presented their petition for a writ of mandamus to the district court for the county of Colfax, praying that the chairman and clerk of said board should be required to execute such bonds; an alternative writ of mandamus was granted and upon the coming in of the answer of the respondents a hearing was had in the district court and a peremptory writ of mandamus was issued which was thereafter served upon the appellants and obeyed by them. The bonds were executed and turned over to the person designated by the board of county commissioners to receive and dispose of the same for the purpose of constructing such buildings. The bonds have been sold and the buildings completed.

The only reason insisted upon in the lower courts and in this court as to why the peremptory writ of mandamus should not have been granted was that these acts of the Territorial legislature were unconstitutional, being in contravention of the act of Congress, approved July 30th, 1886. The respective acts so far as pertinent to the issues in this case are as follows:

"CHAPTER SIX.

"Section 1. Wherever the citizens of any county in this Territory shall present a petition to the Board of County Commissioners, signed by qualified electors of said county, equal in number to at least one half the legal votes cast at the last preceding general election: asking for the removal of the county seat of said county to some other designated place, which petition shall be duly recorded in the records of said county, said Board shall make an order directing that the proposition to remove the county seat to the place named in the petition be submitted to a vote of the qualified electors of said county, at the next general election, if the same is to occur within one year from the time of presenting said petition, otherwise at a special election to be called for that purpose within six weeks from the date of presenting said petition:

"*Provided*, That before making such order the said Commissioners shall require a written guaranty from responsible citizens of the place to which the petitioners desire the county seat removed, that they will provide free of cost to the county, a suitable site and sufficient ground for a court house and jail, and that they will pay to the county treasurer a sum not less than eight thousand dollars, to be used in constructing such court house and jail, in the event that the proposition for removal shall receive a majority of the votes cast at such election; and

"*Provided further*, That the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the county seat of said county; and that no proposition to remove a county seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted, and that no vote shall be ordered on substantially the same proposition oftener than once in ten years."

"CHAPTER THIRTY-THREE.

"Section 1. Hereafter, when the county seat of any county in this Territory shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds of such city for the purpose of such construction and the purchase of suitable grounds for such buildings, not to exceed in amount 3 per cent. upon the total value of all the taxable property within the limits of such city, as shown by the last preceding general assessment for the purpose of taxation: *Provided*, The total indebtedness of such city, including such bonds, shall not exceed four per centum of the total value of all taxable property within the limits of such city, according to such last preceding general assessment."

ACT OF CONGRESS.

"*Be it enacted, etc.*, That the legislatures of the Territories of the United States, now or hereafter to be organized, shall not pass local or special laws in any of the following enumerated cases, that is to say:

* * * *

Locating or changing county seats.

Regulating county and township affairs.

* * * *

In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the Territorial legislatures thereof.

* * * *

ARGUMENT AND AUTHORITIES.

On behalf of the appellees it is submitted that notwithstanding the Act of Congress of July 30,

1886, the legislature of the Territory of New Mexico has a right to enact laws regarding the removal of county seats which may not apply to all the county seats in the Territory; that the legislature may specify any conditions or circumstances as a basis for classification provided they are germane to the subject matter of the legislation; that the difference in the situation and circumstances and needs which call for the formation of a class was within the exclusive control of the legislature, and that the provisions of the acts in question are in conformity with these principles of law. It is further submitted that Chapter 33 is not an act "regulating county affairs," and that whether a general act could be made applicable to the circumstances and conditions is a matter to be determined by the legislature and is not reviewable by the courts. These various propositions will now be discussed; and, if sustained, there was no error in the granting of the peremptory writ of mandamus.

I.

The law is not local or special because it does not apply to the removal of all county seats.

Counsel for the appellants, in his brief, frequently makes the remark that the acts in question apply only to the county of Colfax and can never be made to apply to any other counties in the Territory. This statement may or may not be true as applied to the existing conditions in the Territory, but differences of opinion as to these facts certainly exist. I am informed that in Lincoln county, where the town of Lincoln is the county seat that the town of White Oaks, which is more than twenty miles distant, has a larger population, and under the provisions of this act the county seat of that county might be removed to the town of White Oaks. I am also informed that in the county of

Guadalupe, there is the town of Anton Chico which has a larger population than Puerto de Luna, the present county seat, and it is more than twenty miles distant. If it is thus intended to convey the idea that the act can never in the future be made to apply to other counties, I respectfully submit that the contention on the part of appellants is untenable. It is quite probable that the circumstances designated in the act in question with reference to the removal of county seats might reasonably be expected to exist within a comparatively short period in several of the counties of the Territory; but, even if such contention be true, this does not necessarily render the acts in question special or local within the meaning of the act of congress. It has been repeatedly held that, although an act may apply to only one city or county, this alone does not render it special or local legislation. In the case of *Edmunds vs. Herbrandson*, 50 N. W., 973, the supreme court of North Dakota, in discussing this proposition used the following language:

"It is one thing to assert that all except a single object will be forever kept from the class by circumstances, and another and entirely different thing to attempt to exclude all others by the very terms of the law. A law applicable to all the cities of the state of New York having not less than a million population may never embrace any other city. But, the classification being reasonable, it ought not to be prohibited because no other city may ever enter the class."

In *Fellows vs. Walker*, 39 Fed. Rep., 651, the circuit court of the Northern District of Ohio says:

"The constitutionality of the act is denied because it is said to be a special act conferring corporate powers, that it is special because the city of Toledo is the only city of the third grade of the first class in the State of Ohio, and the only city to which this act is or can be

applicable. But this objection cannot be sustained. It is well settled by authority in Ohio, that the classification of municipal corporations is valid, and that legislation which is applicable to a class is general, although there may be at that time but one city in that class."

Other cases announcing a similar doctrine might be cited, but it is deemed unnecessary, as all of the decided cases hold this proposition not to be a decisive test as to whether a law is local or special. If the act in question is broad enough to include all counties which may hereafter come within the circumstances and differences which form the basis of classification it is not local or special within the meaning of the act of Congress.

II

Classification based on circumstances, relations and conditions which are natural, reasonable and germane to the subject matter of a legislative act is not special legislation within the meaning of the act of Congress.

The courts have recognized various circumstances and conditions as forming a proper basis for classification and legislation. A great number of acts have been passed classifying cities with reference to population but this is only one method and any others may be adopted which naturally arise out of the subject matter within the legislative mind.

In *Harwood vs. Wentworth*, 162 U. S. 547, the assessed valuation of property in the respective counties in the Territory of Arizona was made the basis of classification in fixing the salaries of county officers.

In the case of *Commissioners vs. McMullin*, 25 N. E. 677, the existence of park commissioners was made the basis of classification. The court there said:

"If it be true, as suggested, that the act is applicable to the conditions existing in a single city in the state.

that fact does not necessarily render it local or special legislation. It is general in its terms and applies to all cities of the state which at the time of its passage had parks under the control of park commissioners, or that might at any time thereafter so have parks. If, because only a single city had such parks, an act general in its application to all cities, would be local or special legislation no valid act could be passed affecting such existing parks."

It will be observed from the foregoing cases, and others cited in the brief of counsel for appellants that no particular circumstances have been suggested or designated by the courts as a criterion from which to judge whether any given act is special or not, but the doctrine which is upheld by all the courts is substantially that stated by the New Jersey court in the cases cited by counsel for appellants and quoted in his brief. Many other cases of a similar import can be found.

The doctrine as announced by the Minnesota court and quoted in the case of *State vs. Spaulde*, 34 N. W. 165, and which the courts have upheld, is as follows:

"A law, to be general, need not operate alike upon all the inhabitants of the state, or all the cities, or all the villages, in the state. To require that would be utterly impracticable. A law is general which operates alike upon all the inhabitants of all the cities, or all the villages, or other subjects of a class of such subjects of legislation. That for the purpose of legislation it may be necessary to make, and that the legislature may make such classification, is undoubted. The only practical limitation to this power is that the classification shall be based upon some natural reason, some reason suggested by necessity; by some difference in the situation and circumstances of the subjects classified suggesting the necessity of different legislation with respect to them—and

shall not be merely arbitrary, with no apparent reason except a desire to evade under the forms of a general law, the constitutional inhibition of special legislation."

The principle thus laid down I believe to be the one which has controlled the courts in various decisions where the question of special legislation has been raised under constitutional provisions similar to the act of congress and have upheld classifications based on various circumstances and conditions insisting only upon their being reasonable and germane to the subject-matter of the legislative act.

In the case of *Edmunds vs. Herbrandson, supra* the court had under consideration an act for the removal of county seats which provided "that nothing in this act shall permit the removal to or locating of a county seat of any county at a place not located upon a line of railroad, nor wherein the court house and jail *nave* erected exceed in value the sum of thirty-five thousand dollars." In discussing this provision of the statute the court upheld the provision which required that the county seat should not be changed to a place not located upon a line of railroad, and also held that if the limitation of thirty-five thousand dollars in value had not been restricted to counties having at the time of the passage of the act improvements of such value that it would not have been obnoxious to the constitutional provision.

The supreme court of Kansas, in *State vs. City of Kansas City*, 31 Pac. Rep. 1101, upheld an act which reads as follows:

"Section 1. Whenever two or more cities, neither of which is a city of the first class, lying adjacent to each other, and not more than three-fourths of one mile apart, have attained, or shall hereafter attain, an aggregate population of fifteen thousand or upwards,

such cities shall be consolidated, and become one city, and be governed and regulated by the laws relating to cities of the first class, except as to matters provided for in this act."

The court in passing upon this statute says:

"No previous law was adequate for this purpose. Is the classification fair, and the distinction from other laws substantial and necessary? Can it have general application upon all municipalities which naturally come within its provisions? The act simply provides for the consolidation of adjacent cities of the lower classes into one of the first class. We are of opinion that the classification is not an unnatural one, and that the distinction is substantial and reasonable."

In re. Church, 92 N. Y. 4.

III.

The Legislature is the sole judge of what reasonable and natural conditions and circumstances shall form the basis of classification.

It must be evident to the court that good policy would not justify the passage of an act in New Mexico which would authorize or permit the removal of all county seats in the Territory, but circumstances might arise which would make it advisable to authorize and permit the county seats in some counties to be re-located. As to what circumstances and conditions shall make such legislation advisable I believe the courts have universally maintained should rest solely with the legislature.

In the case of *State vs. Donovan*, 15 Pac. Rep. 785 the Nevada court in passing upon the validity of a statute providing for the issuance of gambling license under certain restrictions and making the law applicable only to certain cities, said:

"In the interest of public morals, as a matter of pub-

lic policy, and a protection to the youth and unwary, it must be admited not only that the legislature had the power, but that it was its duty, to designate the places where the games could be carried on without being exposed to public view. Whether they pursued the wisest course to accomplish this purpose was a question exclusively within the wisdom and discretion of the legislature."

In the supreme court of Illinois in the case of *Cummings vs. City of Chicago*, 33 N. E., 855, the court uses this language:

"The legislature, for reasons appearing satisfactory to it, saw fit not to apply to the smaller assessments in the larger cities of the state the somewhat cumbersome mode of collecting the same provided for in the act under consideration. Whether this was wise or unwise is a question for legislative consideration. Reasons for the distinction existing in the legislative contemplation, it was lawful for the legislature to thus discriminate, if enacted into a general law, uniform in its application to all cities of the state similarly situated."

The supreme court of Kansas in *State vs. City of Kansas City*, 31 Pac. Rep. 1102, used this language:

"It belongs to the legislature to make the classification, and, while it cannot so classify them as to make the law special in its application and results, yet many classes may properly be made. It need not be restricted to the population of municipalities, but it would seem that it might be based on the conduct or condition of the people residents therein."

The supreme court of Pennsylvania, *Lloyd vs. Smith* 35 Atlantic Rep. 200, used this language:

"Classification of counties is therefore as permissible as classification of cities, and the legislature may determine what differences in situation, circumstances, and needs call for a difference of class, subject to the super-

vision of the courts as the final interpreters of the constitution, to see that it is actually classification, and not special legislation under that guise. The presumption is always in favor of the legislative command, and it must prevail, unless clearly transgressing the constitutional prohibition."

I do not mean to contend that the legislature may adopt any arbitrary basis for classification such as used for illustration in some of the cases, but I do contend that the legislature has the sole right to select the distinguishing characteristics which shall govern the classification, provided only, that the circumstances and conditions so selected shall be germane to the subject matter of the legislation.

IV.

Distinguishing characteristics which formed the basis of classification by the legislature in the acts under consideration were natural, reasonable and germane.

The particular clause in Chapter VI, which counsel for appellants insist is special legislation and unconstitutional is that part which is as follows:

"*Provided further*, That the city, town or village named in the petition shall be at least twenty miles distant and of a larger population than the then county seat of said county; and that no proposition to remove a county seat from a city, town or village, situated on a railroad to one not so situated, shall be entertained or voted upon."

In passing a law for the removal of county seats the legislature necessarily took into consideration the facts and circumstances which would justify such removal. Naturally the legislature would desire that the county seat should be located at a point most convenient to the inhabitants of the county and in a large center of popu-

lation. It cannot be claimed that it would be advisable or reasonable to remove the county seat from a large city or town to a smaller one. The expenses of conducting the courts, summoning of jurors, witness fees, and the incarceration of committed suspects depends largely upon the location of the county seat. If the county seat is located in a place having a large population these expenses would necessarily be less than if the county seat were not so located. In any event this was a question which should have been considered by the legislature in the passage of any act regulating the removal of county seats. It is natural and germane to the subject matter of such legislation, and the legislative will is, in this respect, supreme.

Again, the act provides that the county seat shall not be removed to a place less than twenty miles distant. It is apparent that it would not be advisable to remove county seats unless there should be some substantial reason for such removal. The legislature doubtless deemed that it would not be wise to pass an act which would permit the removal of the county seat from West Las Vegas to East Las Vegas, a distance of one mile or less. In such a case the advantages derived from the relocation of the county seat would not off-set the disadvantages which would arise from the abandonment of the county buildings and other county property. The difference in distance would not reduce the expenses of holding courts, nor would the additional convenience thus afforded the citizens of the county over-balance the expenses and disadvantages which would arise from the removal of a county seat for only such a short distance. At any rate it must appear to the judicial mind that in prescribing the conditions under which county seats might be moved that distance was a proper one to be taken into consideration; and, if distance should be at all considered, then the distance adopted by the

legislature is conclusive. This is not the first time that distance has formed one of the distinguishing characteristics in classification. In the case of *State vs. City of Kansas City*, 31 Pac. Rep., 1101, the court held that a distance of three-fourths of a mile was a proper one to be fixed by the legislature in specifying what cities might consolidate. It was necessary for the legislature to designate in some manner how close together cities must be before they should be given the right to consolidate. Cities distant from each other, according to the legislative view, should not be permitted to consolidate; nor, on the other hand, did the legislature consider that it was necessary that the cities should be absolutely contiguous before they were permitted to consolidate, and so the legislature, considering all the facts and circumstances of the case, decided that they should be not more than three-fourths of one mile apart, and the court upheld this view. In the Territory of New Mexico, where the counties are large and the centers of population distant from each other, I do not believe that it can be claimed that a distance of twenty miles was unreasonable when applied to the re-location of county seats.

The next characteristic to which the appellants take exception is that which prohibits the removal of the county seat from a place on a railroad to a place not on a railroad. Accessibility should always be taken into consideration in the location of a county seat, and it is a matter of general knowledge that county seats are located upon a line of railroad wherever practicable. Where the county seat is thus located the business of the courts can be more expeditiously and economically conducted, and in this age of railroads it seems to me that it would be the height of folly to remove a county seat from a railroad to a place not so situated. Such a provision was expressly held to be a proper basis for

classification in the case of *Edmunds vs. Herbrandson, supra.*

The only other provisions contained in the act under consideration is that which requires the citizens of the place to which it is desired to remove the county seat to provide free of cost to the county a suitable site for a court house and jail and to pay a sum of not less than eight thousand dollars to be used in the construction of a new court house and jail. The court will take judicial notice of the fact that in all cases there must be large expense attending the removal of a county seat. It is also a matter of common knowledge that the location of a county seat in any city or town tends to enhance the value of property. For this enhanced value I do not believe it can be successfully contended that it was unreasonable in the legislature to require that the site for the new court house and jail should be donated to the county, and that the citizens of the place to which the county seat should be removed should make some contribution to the construction of the new county buildings; and, having a right to ask for some contribution, it was within the legislative discretion to say how much. Again, it might well be contended that this requirement is not a basis for classification, but simply a condition precedent to the removal of the county seat of any county. Certainly it is one which is in the interest of the general taxpayers of the county, and no one can complain if the citizens of the new county seat voluntarily make the contribution.

It is contended by counsel for appellants that Chapter XXXIII is special legislation, because it is limited to conditions which may come into existence after the passage of the act and does not include similar conditions which may exist at the time or prior to the passage of the act. The language objected to is as follows:

"Hereafter, when the county seat of any county in this Territory, shall be established at any incorporated city and the council of such city shall desire to join with said county in the erection of a public building to be used as a court house and jail, as well as for city purposes, such council may issue bonds."

Counsel for appellants insists that the word "hereafter" qualifies the verb "established" and contends that the section can only apply to counties whose county seats shall be hereafter established at an incorporated city. On a close examination of this language it must be apparent that the adverb "hereafter" was intended to and does modify the verb "may issue," and that the act simply means that under certain conditions the incorporated cities referred to in the act may hereafter issue bonds provided that certain conditions exist. So that, the language in question properly paraphrased reads, "Hereafter the said council may issue bonds when the county seat of any county in this Territory shall be established at such incorporated city, and the council of such city desire to join with said county in the erection of a public building to be used as a court house and jail as well as for city purposes." The predicate "shall be established" does not necessarily imply a future establishment, that is, an establishment after the passage of the act, and may well mean that at any time when the conditions so exist that the county seat is established in any incorporated city, then bonds may issue. Such a construction it is believed does not do violence to the language used. It is a reasonable construction, and where two or more reasonable constructions can be given to an act that will be given to it which will sustain the constitutionality of it, if it would otherwise be unconstitutional.

"Whenever an act of the legislature can be so construed and applied as to avoid a conflict with the con-

stitution, and give it the force of law, such construction will be adopted by the court."

Peel Splint Coal Co. vs. State, 15 S. E. 1000 (W. Va.)

Owen vs. City of Sioux City, 59 N. W. 5.

If, however, this act does apply only to cities in which county seats are established after the passage of the act, still under the authorities it is not special legislation. A statute involving the same principle was passed upon by the supreme court of Iowa in the case of *Owen vs. The City of Sioux City, supra.* The act there before the court provided:

"That cities of the first class that have been or may be organized since January 1st, 1881, shall have power to open, widen, extend, * * * * any street within the limits of the city."

It was especially contended that the act was special legislation and even if a general law that it did not have a uniform operation, because the act by its terms limited its operation to cities of the same class "organized since January 1st, 1881."

After discussing the situation in the state of Iowa, the court sums up the question by saying:

"We have, then, this situation: The original act specified a date as a means of classifying the cities, of the grade named, that are and are not to be affected by it. The difference in population which, as a fact, if specified in the act, would have served as a legal basis of classification, really existed, though not specified; and the query is presented, will the act be declared unconstitutional, when facts are judicially known to exist that would be a legal basis for classification, because a date is used as a basis, and not such facts? That the legislature relied upon the date as a reason for its acts in any other sense than as it served as a means by which the law was made to meet the conditions and

circumstances leading to its enactment no one can believe. Of course the law was not made because of the date. It was made to meet conditions and wants, existing or anticipated, of a class of cities, and the date was but the separating point whereby other cities were excluded from the operations of the law."

The doctrine of this case is also supported by the supreme court of Illinois in the case of *Potwin vs. Johnson*, 108, Ill, 80.

Applying the principle of these decisions to the facts and circumstances as they existed in New Mexico at the time of the passage of Chapter XXXIII, it will be observed that the legislature did not act because of the date to which the statute refers, but with reference to and because of the conditions as they existed in the Territory at that time. This legislature knew and this court will take judicial knowledge of the fact that in the incorporated cities of Santa Fe, Socorro and Silver City, being the only incorporated cities in the Territory of New Mexico where county seats were located, there already existed county court houses and jails and it would be decidedly unadvisable to permit such cities to join with their respective counties in the construction of new court houses and jails or buildings to be used for such purposes as well as city purposes, and in the language of the Iowa court of course the law was not made because of the date, "it was made to meet conditions and wants, existing or anticipated, of a class of cities, and the date was but the separating point whereby other cities were excluded from the operations of the law."

Again, if the act means what counsel for appellants contends, it does not exclude any of the cities where county seats are re-located from the provisions of the act. The court will judicially notice that it was at the same session of the legislature when the only

act ever passed in the Territory was enacted which authorized the removal of county seats, or which authorized the establishment of county seats. Theretofore all county seats had been established by special act of the legislature, and during the time intervening between the passage of the two acts it was impossible for any county to have removed its county seat or established its county seat within any incorporated city.

V.

Chapter XXXIII is not an act regulating county affairs within the meaning of the act of Congress.

Chapter XXXIII is an act which governs one transaction of a county or city. It relates only to the construction of a court house and jail. It does not deal with the ordinary business or affairs of the county. It is an extraordinary act. It is not a transaction with which the officers of the county are usually permitted to deal. Under such circumstances it is clearly not an act regulating county affairs. The words "county affairs" as thus used relate to the ordinary and usual business of the county. In the state of Indiana the constitution prohibited special legislation "regulating county business." The word "business" as used in this connection is synonymous with the word "affairs." The constitution of Indiana did not expressly prohibit special legislation regarding the removal of county seats, and a special act was passed for the removal of a county seat, and it was contended that it was obnoxious to the constitutional provision preventing special legislation regulating county business. The supreme court of Indiana disposing of the case of *Mode vs. Beasley*, 42 N. E. 730, says:

"It remains to determine whether the act in question providing for county-seat removal is a subject embraced in section 22 among the 17 in which the inhibi-

tion is absolute, and in which the legislature has no discretion or right of judgment. One of the 17 subjects embraced in that section, and thereby put beyond the power of the legislature to pass a local law upon it, is the subject of regulating county and township business. The appellants contend that the subject of removal of a county seat falls within the subject designated by the words regulating county and township business; that it is county business. It was held, in effect, that it was not county business, in *Thomas vs. Board, supra.* The ruling upon that point in that case has never been questioned. In *Mount vs. State, supra,* the court reaffirmed the same doctrine in the following language: "Township business cannot be regulated by special or local laws, but a law requiring reimbursement to an officer is not a regulation affecting township business. It is an act granting special relief in a particular case. The term, 'business,' as employed in the constitution does not apply to acts granting relief in particular and extraordinary cases. The term 'business,' when applied to a public corporation, signifies the conduct of the usual affairs of the corporation and the conduct of such affairs as commonly engage the attention of township and county officers. It does not mean the performance of an act which can be done only in a particular case, and by authority of a special law. This statement of the law is, we think correct, and especially applicable to the case now before us, and hence, though the act of 1880 be local and special, as we think it is, yet, being on a subject not embraced in section 22 of article 4 of the constitution, the determination of the legislature, by enacting the law, that one of general and uniform operation throughout the state could not be made applicable, is final and conclusive upon the courts."

Mount, trustee, vs. State, 90 Ind. 31.

VI.

Chapter XXXIII, if special, is not obnoxious to the Act of Congress which provides that no special law shall be enacted in any case where a general law can be made applicable.

If Chapter XXXIII is not an act regulating county affairs within the meaning of the Act of Congress it will not be declared unconstitutional or void, although a special act, by reason of anything contained in the Act of Congress which prohibits the enactment of special laws where general laws can be made applicable. It is well settled by authority that under constitutional provisions similar to this Act of Congress, the question as to whether a general law can be made applicable or not is one exclusively for the legislature and by the passage of a special act a conclusive presumption is raised that in the opinion of the legislature a general law was not applicable.

Mode vs. Beasley, 42 N. E. 729.

Eichholtz, et al. vs. Martin, County Clerk, et al. 36 Pac. Rep. (Kas.) 1064.

People, ex rel. Graves vs. McFadden, et al. 22 Pac. Rep. (Cal.) 851.

Brown vs. City of Denver, et al. 3 Pac. Rep. 455.

Keel, et al. vs. Board of Directors of St. Francis Levee District, et al. 27 S. W. (Ark.) 590.

Powell vs. Durden, 31 S. W. Rep. (Ark.) 740.

Edmunds, et al. vs. Herbrandson, et al. 50 N. W. 970 at 974.

Respectfully submitted,

ANDRIEUS A. JONES,

Attorney for Appellees.

Supreme Court of the United States.

No. 234.—October Term, 1900.

John E. Codlin, Chairman, and Manuel M. Salazar, Clerk of the Board of County Commissioners of Colfax County, Appellants, *vs.* Charles B. Kohlhausen, Christopher N. Blackwell, Alfred C. Price, and Timothy F. McAuliffe.	Appeal from the Supreme Court of the Territory of New Mexico.

[April 15, 1901.]

The Chief Justice: This was a petition filed by appellees in the District Court for Colfax County, New Mexico, praying for a writ of mandamus directed to Codlin, chairman, and Salazar, clerk, of the Board of County Commissioners of the county of Colfax, commanding them to officially sign and execute certain bonds and deliver them to the designated agent of the county for sale, for the construction of a courthouse and jail.

The alternative writ of mandamus was issued and due return made, whereupon, and after hearing, the District Court ordered the peremptory writ to issue, which was done, and the writ served, October 23, 1897.

The case was carried on error to the Supreme Court of the Territory in June, 1898, and it appears from an affidavit in that court that the mandate of the District Court was obeyed and the bonds issued and sold; and from an affidavit in this court that the proceeds were used in the construction of the courthouse and jail, which were completed on or about January 1, 1899. That affidavit also states that Codlin ceased to be chairman or a member of the Board of County Commissioners in January, 1899, and that Salazar ceased to be clerk during or prior to March, 1899.

The Territorial Supreme Court affirmed the judgment of the District Court August 28, 1899. 9 N. Mex. 565. An appeal from the judgment of affirmance to this court was allowed January 2, 1900, and the record filed here March 28.

We think the cause comes within the rule applied in *Mills* v. *Green*, 159 U. S. 653, and cases cited, and the order must be

Appeal dismissed without costs to either party.